
Volume 121
Issue 2 *Dickinson Law Review* - Volume 121,
2016-2017

10-1-2016

"Reservations of Like Character"-The Origins and Benefits of the National Park System's Classification Hierarchy

Garett R. Rosenthal

Follow this and additional works at: <https://ideas.dickinsonlaw.psu.edu/dlra>

Recommended Citation

Garett R. Rosenthal, *"Reservations of Like Character"-The Origins and Benefits of the National Park System's Classification Hierarchy*, 121 DICK. L. REV. 355 (2016).

Available at: <https://ideas.dickinsonlaw.psu.edu/dlra/vol121/iss2/3>

This Article is brought to you for free and open access by the Law Reviews at Dickinson Law IDEAS. It has been accepted for inclusion in Dickinson Law Review by an authorized editor of Dickinson Law IDEAS. For more information, please contact lja10@psu.edu.

“Reservations of Like Character”—The Origins and Benefits of the National Park System’s Classification Hierarchy

Garett R. Rose*

ABSTRACT

The National Park Service employs a complex naming scheme to classify its holdings. Commentators and agency officials have called for a simplification of this classification scheme, which presently encompasses nineteen categories and a bevy of singular designations. Simplification has certain benefits: reducing the administrative cost of maintaining the complex system and the confusion it engenders among visitors. The classification hierarchy is woefully under-studied, however; this Article provides the first sustained exploration of its evolution and benefits. An analysis of the hierarchy’s evolution reveals that it is deeply connected to America’s diverse and shifting attitudes toward its heritage, both reflecting and perpetuating an unwillingness to lump all aspects of this heritage into a small set of indistinguishable categories. A discussion of the hierarchy’s practical effects shows that it generates substantial benefits beyond economic impacts. The classification scheme reinforces environmental law by creating focal points for statutes and environmental activism. It provides signals to local economic actors. And it allows for legislative tailoring that helps solve interest group conflict, safeguard local communities, and protect the National Park System. In exploring these issues, this Article hopes to demonstrate (for both academics and federal decisionmakers) the continued vitality of the Park Service’s complex classification hierarchy.

* J.D. 2013, The University of Chicago Law School; Law Clerk for Judge Frank Easterbrook of the United States Court of Appeals for the Seventh Circuit, 2013-2014; Associate, Covington & Burling LLP. I am grateful to Lior Strahilevitz, Thomas Miles, Joshua Ackerman, Erica Pohnan, Jonathan Williams, Noah Yavitz, and the participants of the 2012-2013 Canonical Ideas in Legal Thought seminar for their comments and insights. I am also very grateful to Meredith Rose for her invaluable help and patience during the writing process. The analysis expressed in this article solely reflects my views and not those of Covington & Burling LLP or its clients. All errors are mine.

Table of Contents

INTRODUCTION	357
I. THE HISTORY AND STRUCTURE OF THE CLASSIFICATION	
HIERARCHY	362
A. A Brief History of the National Park System's Classifications....	362
1. The history of the classifications prior to the National Park Service Act.....	362
2. The classifications and the National Park Service Act.....	364
3. The growth of the classification hierarchy after the NPS Act.	365
B. The Modern Classification Hierarchy	369
1. The facts.....	369
2. The impact of the classifications.....	371
a. The descriptive importance of the classifications.	372
b. The legal importance of the classifications.....	372
c. The economic importance of the classifications.	373
C. Existing Academic Commentary	374
II. WHY HAVE A CLASSIFICATION HIERARCHY?	376
A. The Classification Hierarchy and America's Relationship with Its Natural and Built Heritage	377
1. Shifting historical attitudes toward the built and natural environment	377
2. The hierarchy reflects the diversity of normative commitments.....	379
a. Shifting justifications for new classifications.	379
B. The Classification Hierarchy as a Repository of Diverse Normative Commitments	384
1. The NPS classification hierarchy is special among federal land classification systems.....	385
2. Those who are closest to the creation of new units appear to understand that the classifications reflect diverse normative commitments.....	389
III. WHAT DO WE GET OUT OF THE CLASSIFICATION HIERARCHY?	393
A. The Hierarchy and Environmental Law	394
1. The classification hierarchy's creation of regulatory focal points.....	394
a. National Environmental Policy Act (NEPA).	394
b. The Clean Air Act (CAA).....	397
c. Unit Enabling Legislation.	399
2. The classification hierarchy's indirect impact.....	400
B. The Classification Hierarchy and Economic Signaling.....	402
1. The classifications as economic signals.....	403
C. The Classification Hierarchy and Legislative Tailoring	407
1. The classification hierarchy and interest groups.....	407
2. The classification hierarchy and local communities.....	411
3. The National Park Service and the classification hierarchy..	413

a. System Growth..... 414

b. Managing the Recreation-Preservation Tension 415

CONCLUSION 418

INTRODUCTION

August 2016 marked the National Park Service’s (NPS) centennial as guardian and administrator of some of America’s most important natural, cultural, and historical possessions. Since its inception in 1916, NPS has grown to oversee over 400 different units ranging from Grand Canyon National Park to the Saugus Iron Works National Historic Site.¹ These units, wide and varied as they are, are organized within a complex classification hierarchy comprised of a multitude of categories.² Indeed, there are more than three different designations for different types of battlefield sites alone.³ Besides well-known national parks and national monuments, the National Park System (the “System”) also includes the following nineteen general designations: National Battlefield, National Battlefield Park, National Military Park, National Battlefield Site, National Historical Park, National Historic Site, International Historic Site, National Lakeshore, National Memorial, National Monument, National Park, National Parkway, National Preserve, National Reserve, National Recreation Area, National River, National Wild and Scenic River and Riverway, National Scenic Trail, and National Seashore.⁴

1. President Barack Obama’s recent declaration of Stonewall National Monument in New York pushed the count to 412. See *Monuments Protected under the Antiquities Act*, NATIONAL PARKS CONSERVATION ASSOCIATION, <https://www.npca.org/resources/2658-monuments-protected-under-the-antiquities-act> (last visited Oct. 21, 2016).

2. See *Facts & Figures*, NAT’L PARK SERV., <https://www.nps.gov/aboutus/news/factsfigures.htm> (last visited Dec. 21, 2016) (providing a comprehensive list of the units and their designations under “Site Designations”).

3. See NAT’L PARK SERV., THE NATIONAL PARKS: INDEX 2009–2011: REVISED TO INCLUDE THE ACTIONS OF THE 110TH CONGRESS ENDING JANUARY 3, 2009 8 (2011), https://www.nps.gov/hfc/products/pubs/NPS_index2009_11.pdf. Beyond the System, there are a variety of other protected areas governed by other federal agencies, including national scenic areas and national wildlife refuges. See Sarah A. Cline, Stephan Weiler & Ayse Aydin, *The Value of a Name: Estimating the Economic Impact of Public Land Designation*, 48 SOC. SCI. J. 681, 683 Table 1 (2011). All told, a vast system of over 1500 protected areas currently spans the United States. See *id.*

4. See NAT’L PARK SERV., *supra* note 3, at 13. NPS is also involved with “affiliated areas,” such as national heritage areas. As of 2016, there were twenty-five affiliated areas. See *Facts & Figures*, *supra* note 2. These areas, however, are not formal units within the System. They are areas that “are neither Federally owned nor directly administered by the National Park Service but which utilize NPS assistance.” *Ice Age Floods, Study of Alternatives and Environmental Assessment: Following the Pathways of the Glacial Lake Missoula Floods*, NAT’L PARK SERV., 38 (Feb. 2001), <https://www.nps.gov/iceagefloods/>. For the purposes of the paper the System is used to indicate only the 400+ units actually administered by NPS. It is also worth noting that

This assortment has intermittently prompted individuals both inside and outside of NPS to argue that Congress should reduce the number of classifications.⁵ Indeed, Jonathan Jarvis, NPS director for both of President Obama's terms, has argued in favor of reduction.⁶ While the

some classifications have units under their umbrella that are controlled by federal agencies other than NPS. See LAURA B. COMAY, CONG. RESEARCH SERV., R 41816, NATIONAL PARK SYSTEM: WHAT DO THE DIFFERENT PARK TITLES SIGNIFY? 6, 10 (2013). For example, wild and scenic rivers have been placed under a variety of agencies, as have some national scenic trails and national monuments. See *id.* at 10.

5. See, e.g., Robert L. Fischman, *The Problem of Statutory Detail in National Park Establishment Legislation and Its Relationship to Pollution Control Law*, 74 DENV. U. L. REV. 779, 808–10 (1997) (“Even more deleterious is the manner in which Congress frustrates the ability of the Service to manage its units together in an integrated system.”); see *Advancing the National Park Idea*, NATIONAL PARKS SECOND CENTURY COMMISSION, 14, 43 (2009), http://www.nps.gov/civic/resources/Commission_Report.pdf (last visited July 31, 2016); see DWIGHT F. RETTIE, OUR NATIONAL PARK SYSTEM: CARING FOR AMERICA'S GREATEST NATURAL AND HISTORIC TREASURES 57–58 (1995); see David Harmon, *Beyond the 59th Parallel: Reforming the Nomenclature of the US National Park System*, 29 GEORGE WRIGHT F. 188, 194–95 (2012). The United States appears to be relatively unique in the complexity of its park system classifications. See, e.g., *The Parks Canada Charter*, PARKS CAN., <http://www.pc.gc.ca/eng/agen/chart/charttr.aspx> (last visited Oct. 21, 2016); see, e.g., *About Us*, PARKS AUSTL., <http://www.parksaustralia.gov.au/about.html> (last visited Oct. 21, 2016) (providing links to pages detailing several categories of land managed by Parks Australia); see, e.g., *New Zealand Protected Areas*, N. Z. MINISTRY FOR CULTURE AND HERITAGE, <http://www.teara.govt.nz/en/protected-areas/page-1> (last visited Oct. 21, 2016) (listing eight categories of protected land, along with many idiosyncratic designations). It is worth noting, however, that it is difficult to directly compare the U.S. NPS scheme to the preservation schemes of other countries due to a number of key differences between the U.S. and its peers, including, for example, governmental structures (New Zealand, for example, does not appear to have an NPS equivalent, but a broader Ministry of Conservation; see *Our Role*, N. Z. DEP'T OF CONSERVATION, <http://www.doc.govt.nz/about-us/our-role/> (last visited Oct. 21, 2016)) and histories (for example, some countries have separated historical and natural preservation; compare *Israel Nature and Parks Authority*, ISR. MINISTRY OF ENVTL. PROTECTION, <http://www.sviva.gov.il/English/AboutUs/Pages/NatureAndParksAuthority.aspx> (last visited Oct. 21, 2016), with *About Us—Vision and Goals*, ISR. ANTIQUITIES AUTHORITIES, http://www.antiquities.org.il/article_Item_eng.asp?sec_id=40&subj_id=226 (last visited Oct. 21, 2016)). Further, it can be difficult to establish which protected lands would be analogous to those under NPS's jurisdiction and which are analogous to other forms of protected land within the United States (such as Bureau of Land Management land or Forest Service land).

States, for their part, also employ a wide variety of classifications hierarchies. Compare *New Jersey State Parks, Forests, Recreation Areas and Marinas*, N.J. DEP'T OF ENVTL. PROT., <http://www.state.nj.us/dep/parksandforests/parks/parkindex.html> (last visited Oct. 21, 2016), with *Find a Park*, CAL. DEP'T OF PARKS AND RECREATION, <http://www.parks.ca.gov/ParkIndex> (last visited Oct. 21, 2016) (listing over ten different state park unit classifications including the somewhat mysterious “point of interest”).

6. *Building on America's Best Idea: The Next Century of the National Park System: Hearing Before the Subcomm. on Nat'l Parks, Forests and Public Lands of the H. Comm on Nat. Res.*, 111th Cong. 3 (2010) (statement of Jonathan B. Jarvis, Director of the National Park Service) (“The Commission also recommends the Service reduce the number of more than two dozen different park titles currently used for units of the

proponents of this view have not presented detailed analyses of their position, the facial logic seems obvious; according to the reductionist argument, the costs attendant upon the classification hierarchy’s complexity simply outweigh whatever benefits might flow from it.

There are at least four articulable costs that the complexity generates. First, the complexity of the classification hierarchy increases administrative costs for NPS. The very fact of having to explain the ins and outs of the hierarchy is a cost NPS has to bear, on one level or another. To use a somewhat prosaic example, the complexity of the hierarchy makes NPS’s job more difficult when an agency head appears before Congress to testify about new park units and has to expound the differences in classification to confused members.

Second, the classification hierarchy tends to fragment the System overall, impeding unified management and diluting the ability of NPS to effectively administer the System.⁷ The end result is that NPS is spread too thin as it attempts to pursue a panoply of different missions for the different classifications.

Third, the complexity of the hierarchy can exacerbate the tendency to artificially or arbitrarily overvalue certain units and undervalue others. A complicated classification system is, at its core, a valuative hierarchy. Even though there is no formal ranking of the unit classifications, the very existence of a multitude of classifications can aggravate the tendency of park managers and visitors alike to rank designations based on the reputation of their bearers. As such, the units that bear the same titles as those that are appended to the so-called “crown jewels” (Grand Canyon, Yellowstone, and so on) will be seen as “better” than units that bear titles associated with “lesser” park units.⁸ While this ranking may be beneficial in moderation, it can feed a cycle wherein resources, personnel, and visitors are funneled to a small handful of the most prominent units and away from their less “notable” brethren, leaving them ill-cared for.⁹

Fourth, the names confuse people and businesses.¹⁰ At the worst, confusion caused by the classifications might sour people on the whole NPS experience; if a family goes on a road trip to Eugene O’Neill National Historic Site expecting amenities akin to what they might find

National Park System. We feel strongly that a nomenclature with fewer titles would go a great way to making the public more aware of the National Park System as a whole.”).

7. See Fischman, *supra* note 5, at 808–10.

8. For a more in-depth exposition of this argument, see RETTIE, *supra* note 5, at 73–84.

9. See *id.* at 74–76.

10. See *id.* See also Luke Ramseth, *Craters of the Moon: Could national park boost rural Idaho economy?* IDAHO STATESMAN (Feb. 4, 2016, 12:16 AM), <http://www.idahostatesman.com/news/local/environment/article58366408.html>.

at Grand Canyon National Park, then they will be sorely disappointed and might be less inclined to visit other units. Further, the mass of classifications might deter individuals from visiting park units in the first place—they might perceive the cost of obtaining information as too high. In essence, the complexity of the classification hierarchy might depress visitation numbers and make the System more foreboding to visitors.

While the aforementioned costs are certainly non-negligible and worth addressing, they are not the only externalities generated by the classification system. Proponents of simplification generally avoid discussing the *benefits* of that hierarchy, and their arguments largely imply that the current system has few—if any—attendant benefits, rendering it next to meaningless. Few commentators have actually defended the classifications on any systematic ground.¹¹ On an intuitive level, however, it seems premature to dismiss such a complex system on the basis of hypothesized (but unproven) potential confusion and administrative costs—and to simply assume that such a system generates no countervailing benefits. This paper aims to push back against the argument that the NPS classification hierarchy is meaningless and, as such, can be easily swept away. It will do this by investigating two broad questions. First: Why do we have the classification hierarchy? Second: What work—if any—does the classification hierarchy do for us?

As to the first question, this paper will argue that the hierarchy is not the result of political accretion or an academic, Aristotelian urge to categorize and sub-divide. It is, rather, intimately tied to the evolution of America's shifting attitude toward the natural and built environment. More than simply reflecting historical change, the hierarchy also acts as an important repository for our differentiated normative commitments to the land—as an exploration of classifications used for other federal entities and the views of those close to NPS unit creation will show. In essence, the hierarchy stands as both evidence of an unwillingness to lump all the aspects of the country's heritage (both natural and built) into a small set of indistinguishable categories, and a method for embracing that diversity.

That the classification hierarchy adds some positive value doesn't necessarily militate in favor of its continuance. After all, some of the original motivations could be outmoded. These doubts lead to the article's second question: What *practical* work does the hierarchy do?

This article will argue that the classification hierarchy generates significant benefits beyond acting as a "warm and fuzzy" normative

11. See RETTIE, *supra* note 5, at 57–58; see COMAY, *supra* note 4 at 13–14. Unfortunately, both of these arguments are brief and under sourced.

outlet. It is important to note at the outset that this investigation is not focused on the direct economic impact of the System. Economists and social scientists have done (and continue to do) that work.¹² Instead, it will focus on the softer benefits that accrue as a result of the hierarchy currently in place. In particular, this paper identifies four broad categories of benefits that flow from the classification hierarchy. First, the hierarchy reinforces the broader structure of the nation’s environmental laws. It does this both directly (for example, through specific preservation mandates in legislation) and indirectly (for example, by creating focal points for activism). Second, the classification hierarchy acts as a form of economic signaling. Other commentators have noted that the classifications act as signals to visitors as to what they should expect at particular locations.¹³ This paper repackages the core of that idea to focus on commercial enterprises—specifically, that the classifications signal to business interests what kind of commercial activity would be most successful outside of the federal boundaries. Third, the hierarchy creates opportunities for legislative tailoring that help ensure the continued vitality of the entire system. In particular, this paper will focus on three tailoring stories: a) the hierarchy creates room for *interest group* conflict resolution (both cooperatively and antagonistically); b) it helps ensure that *local communities* won’t be overrun by new designations; and c) it assists *NPS itself* by making it more difficult to harm the System and creating more opportunities for expansion, and by providing opportunities for alleviating the long-standing tension at the core of NPS’s mandate between recreation and preservation.

As this analysis will show, the classification hierarchy generates significant practical benefits. Its value is not simply rooted in it being a repository of normative commitments (although this has value in itself). Given this state of affairs, the Article will conclude by suggesting that we should be wary of dismantling or tinkering with the hierarchy. Instead, we should think of ways to maintain its benefits while also attempting to minimize the costs that flow from things like visitor confusion.

This Article will proceed in three Parts. Part I will provide necessary background to frame the rest of the Article. In particular, it will discuss NPS history, the growth of the classification hierarchy, the legal importance of the classifications, the direct economic impact of the

12. See, e.g., *Economic Impact of National Parks*, HEADWATER ECON., <http://headwaterseconomics.org/headwaters/economic-impact-of-national-parks> (last visited Oct. 21, 2016).

13. See *infra* notes 246–250 and accompanying text.

System, and the extant literature on the System. Part II will examine the normative question and expand upon the thoughts briefly touched on above. Part III will engage with the practical question and further explore the various general benefits mentioned above.

I. THE HISTORY AND STRUCTURE OF THE CLASSIFICATION HIERARCHY

While a full history of the System is beyond the scope of this Article, this Part will attempt to sketch a general overview of its history, with a particular focus on the classifications. From there, it will outline the basic structure of the classification hierarchy. The goal is to provide a rough sense of how the classifications are organized, how they interact with each other, and why they can accurately be termed a hierarchy. This Part will then explore the legal differences between, as well as the relative economic importance of, the classifications, and will end with a brief overview of the academic literature that focuses on the System.

A. *A Brief History of the National Park System's Classifications*

1. The history of the classifications prior to the National Park Service Act.

Today, the System comprises over 400 units, covering everything from deep canyons to Civil War battlefields.¹⁴ While the first national park proper was not created until March 1, 1872,¹⁵ the groundwork for the system had already been laid by prior federal action for the purposes of preservation. The 1832 federal preservation of natural springs, in what is now Hot Springs National Park in Arkansas, along with the protection of a portion of what would later become the National Capital Parks in Washington, DC, constituted the nation's first federal set-asides for preservation purposes.¹⁶ Thirty years later, America reached another waypoint on its path to establishing national parks when, in 1864, the federal government granted land that is now Yosemite National Park to California for scenic preservation.¹⁷ While none of these early actions is generally considered to be the birth of the parks system, they suggest a

14. See *Facts & Figures*, *supra* note 2; *President Obama Designates Three National Monuments in the California Desert*, NAT'L PARKS CONSERVATION ASS'N (Feb. 12, 2016), <https://www.npca.org/articles/1136-president-obama-designates-three-national-monuments-in-the-california>.

15. BARRY MACKINTOSH & JANET McDONNELL, *THE NATIONAL PARKS: SHAPING THE SYSTEM* 13 (2005).

16. *Id.* at 16–17.

17. *Id.* at 12.

rough recognition that tailoring preservation to the character of the thing being preserved can yield substantial benefits.

Yellowstone, established in 1872 by President Grant,¹⁸ is traditionally considered the nation's first national park.¹⁹ Although the System itself did not exist until its official establishment in 1916, Yellowstone's creation nudged open the floodgates for preservation. In the years between the Civil War and World War I, the nation saw a proliferation of ad hoc protected areas.²⁰ Far from being unified in any particular way, these areas were classified differently, possessed different legal protections, and often had significantly different economic statuses.²¹ The nineteenth century closed amidst a burgeoning (and successful) movement to preserve the Civil War battlefields²² as well as expanded protections for forests and other resource-rich landscapes.²³ Indeed, the Grand Canyon was originally protected as a forest preserve before its ascension to national monument status.²⁴ Perhaps most famously, after the 1906 passage of the Antiquities Act,²⁵ national monuments began to dot America's landscapes, protecting everything from Devil's Tower to the Grand Canyon.²⁶

Aside from the different names, these protections generally had different purposes lurking behind them. Battlefields were (appropriately) set aside to commemorate and memorialize those who fought in the Civil War.²⁷ Forest preserves were set aside more for resource management and extraction than for any recreational or aesthetic goals.²⁸ Monuments were—ostensibly—set aside for scientific and anthropological preservation.²⁹ It is also worth noting that during the interbellum period, the national park designation itself did not lie fallow—several national parks were created, including Glacier National Park (Montana), Mesa

18. See Act of Mar. 1, 1872, ch. 24, § 1, 17 Stat. 32, 32. Interestingly, the first federal reservation of land to technically carry the name "national park" in the creation legislation is the now defunct Mackinac Island National Park. See Act of Mar. 3, 1875, ch. 191, 19 Stat. 517, 517.

19. See MACKINTOSH & McDONNELL, *supra* note 15, at 13.

20. *Id.* at 14–17.

21. See *id.*

22. See, e.g., Act of Aug. 19, 1890, ch. 806, 26 Stat. 333 (creating Chickamauga and Chattanooga National Military Park). See also, MACKINTOSH & McDONNELL, *supra* note 15, at 32–34.

23. See MACKINTOSH & McDONNELL, *supra* note 15, at 14.

24. See Proclamation No. 45, 27 Stat. 1064, 1064–65 (Feb. 20, 1893). Perhaps somewhat unexpectedly, we have Benjamin Harrison to thank for the Grand Canyon.

25. Antiquities Act of 1906, Pub. L. No. 59-209, § 1, 34 Stat. 225, 225 (codified as amended at 16 U.S.C. §§ 431–433 (2006)).

26. MACKINTOSH & McDONNELL, *supra* note 15, at 15–16.

27. See Act of Dec. 15, 1894, ch. 6, § 1, 53 Stat. 595, 595.

28. See MACKINTOSH & McDONNELL, *supra* note 15, at 14.

29. See Antiquities Act of 1906 § 1.

Verde National Park (Colorado), and the now-defunct Sullys Hill National Park (North Dakota).³⁰

It is safe to say that, prior to NPS's creation in 1916, a wealth of designations geared towards a variety of different goals existed throughout the United States. It is not as if the country made a post-hoc decision to put its handful of national parks under a single governmental umbrella. Rather, the country had a number of different protected landscapes, each with varied names, missions, and protections. A diversity of classifications has been immanent in the System since before there even was a system.

2. The classifications and the National Park Service Act.

In 1916, President Woodrow Wilson signed the National Park Service Organic Act, creating the National Park Service and formally beginning the National Park System.³¹ Section 2 of the Act stated:

[T]he director shall, under the direction of the Secretary of the Interior, have the supervision, management, and control of the several national parks and national monuments which are now under the jurisdiction of the Department of the Interior, and of the Hot Springs Reservation in the State of Arkansas, and of such other national parks and reservations of like character as may be hereafter created by Congress.³²

The purpose of NPS was (and is) to “conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.”³³ Immediately, all the national parks and most of the national monuments (as well as the Hot Springs reservation) were organized under a single umbrella. It is critical to note, however, that the classifications were not eliminated or unified. National parks remained national parks and national monuments remained national monuments. Even Hot Springs Reservation remained Hot Springs Reservation at the time. Neither the bill itself nor the committee reports evince a desire to unify the land designations themselves (as opposed to the administration of these

30. See *Facts & Figures*, *supra* note 2 (noting dates of designations under “NPS Anniversaries”); Bob Janiske, *Pruning the Parks: North Dakota's Sullys Hill National Park (1904-1931)*, NAT'L PARKS TRAVELER (Apr. 27, 2010), <http://www.nationalparks-traveler.com/2010/04/pruning-parks-north-dakota%E2%80%99s-sullys-hill-national-park-1904-19315743>.

31. An Act to Establish a National Park Service, and for Other Purposes, ch. 408, § 1, 39 Stat. 535, 535 (1916).

32. *Id.* at § 2, 39 Stat. at 535.

33. *Id.* at § 1, 39 Stat. at 535.

designations, which they very much wanted to unify).³⁴ Indeed, in the hearing prior to passage, the testimony and subsequent questioning of Stephen Mather—who would go on to become the first director of the National Park Service—seems to indicate a desire to keep the designations separate or, at least, not get rid of them.³⁵ Most of the relevant conversation is about how to deal with the allocation of national monuments between the Department of the Interior, the Department of Agriculture, and the War Department.³⁶ The discussion does not touch on unifying the units under a single designation. Furthermore, some of these comments suggest that the desire to maintain the classifications was not borne out of mere status quo perpetuation, but was instead based on normative judgments about the relative importance of certain designations as compared to others.³⁷ Equally telling is the text of the Act itself—the three named designations (park, monument, Hot Springs) and the “reservations of like character” clause explicitly contemplate a system that will have a multitude of designations.³⁸

3. The growth of the classification hierarchy after the NPS Act.

From the beginning the System was designed and intended to hold a multitude of classifications. Rather than rejecting the diversified history of land classifications, the NPS Act and NPS itself embraced this heritage and perpetuated it. The subsequent decades saw Congress and the Service taking full advantage of the leeway inherent in the “reservations of like character” clause. As the System grew, so too did the classifications.

The 1920s and 1930s saw the System’s holdings expand rapidly and, with it, the classification hierarchy grew.³⁹ The beginnings of the System’s trend toward more classifications are two of Franklin Delano Roosevelt’s 1933 executive orders. The first, Executive Order 6166,

34. See generally S. REP. NO. 64-662 (1916); H.R. REP. NO. 64-700 (1916); H.R. REP. NO. 64-1136 (1916) (Conf. Rep.).

35. *Bills to Establish a National Park Service and for Other Purposes, Hearings on HR 434 and HR 8668 before the House Committee on the Public Lands*, 64th Cong. 11–15 (1916) (testimony of Stephen T. Mather, Assistant to the Secretary of the Interior) [hereinafter *National Park Service Hearings*]. At one point Mather asserts, “[u]ltimately [Lassen Peak, the Grand Canyon, and Mount Olympus] may be made into national parks, and then they would automatically come under the control of this national-park service. We could, however, administer them as monuments.” *Id.* at 12. Mather then argues that the monuments should fall under NPS jurisdiction. *Id.* at 13. Note that he does not suggest eliminating the designation.

36. *Id.* at 11–15.

37. *Cf. id.* at 14.

38. An Act to Establish a National Park Service, and for Other Purposes § 1, 39 Stat. at 535.

39. See MACKINTOSH & McDONNELL, *supra* note 15, at 28–61.

reorganized responsibility for “[a]ll functions of administration of public buildings, reservations, national parks, national monuments, and national cemeteries” under the newly designated Office of National Parks, Buildings, and Reservations.⁴⁰ The second, Executive Order 6228, explicitly transferred a number of the units under the control of the War Department to the Department of the Interior.⁴¹ These two orders greatly expanded the number of designations under the control of NPS—in addition to placing all the national monuments under the Service’s jurisdiction, it also transferred a large number of military sites and control over the National Capital Parks.⁴² While of critical importance,⁴³ these moves were simply the first salvos in a larger reorientation of the National Park Service.

Additional directives reorienting NPS’s focus came in 1935 and 1941. In 1935, Congress passed the Historic Sites Act,⁴⁴ which directed NPS to research, acquire, and maintain “historic sites, buildings and objects of national significance.”⁴⁵ For the first time, NPS became explicitly tasked with the mission of preserving America’s historic heritage.⁴⁶ In 1941, the Department of the Interior formulated a general management plan for the parks under a 1936 congressional mandate⁴⁷ that focused on the “paramount need . . . for public recreational areas, of all obtainable types and providing for a wide range of beneficial activities, within easy reach of all urban populations.”⁴⁸ In addition to generally suggesting that the Service look into adding units closer to urban areas, the plan specifically identified several types of land ripe for addition: seashores and beaches, historic and archaeological structures, parkways, trails and trailways, waterways, and waysides.⁴⁹ Reflecting the trends expressed in the Historic Sites Act and the recreation report, the Great Depression also saw the creation of the first National Recreation Area (“NRA”) (at Boulder Dam, now Lake Mead National Recreation Area near Las Vegas, Nevada), National Parkway (George Washington Memorial Parkway near Washington, DC), National

40. AMERICA’S NATIONAL PARK SYSTEM: THE CRITICAL DOCUMENTS 116 (Lary M. Dilsaver ed., 1994). This was a new name for NPS that was changed back shortly thereafter. See RETTIE, *supra* note 5, at 57.

41. AMERICA’S NATIONAL PARK SYSTEM, *supra* note 40, at 116–18.

42. *Id.* at 118–21.

43. See MACKINTOSH & McDONNELL, *supra* note 15, at 28.

44. Ch. 593, 74 Stat. 666 (1935).

45. *Id.* at § 1, 74 Stat. 666.

46. See MACKINTOSH & McDONNELL, *supra* note 15, at 51–54.

47. See *id.* at 46.

48. U.S. DEP’T OF THE INTERIOR, A STUDY OF THE PARK AND RECREATION PROBLEM OF THE UNITED STATES (1941), reprinted in AMERICA’S NATIONAL PARK SYSTEM, *supra* note 40, at 151.

49. *Id.* at 154–59.

Historic Site (Salem Maritime in Massachusetts) and National Seashore (Cape Hatteras in North Carolina).⁵⁰ One of the most important points about the Historic Sites Act, the recreation study, and these new classifications, however, is not that they directed NPS to look at new types of areas to include in the system but rather that they tied the core mission of the National Park System to providing a diversity of recreational and educational experiences to the citizenry. It wasn't enough simply to look after the so-called "crown jewels"; smaller sites also needed robust protection. It also wasn't enough to protect scenic landscapes; historic sites deserved similar consideration. These developments during the Depression and World War II pointed the System toward a future where it would need to continue to obtain markedly different types of acquisitions in order to fulfill its basic mission.

Changes since World War II have only reinforced the reorientation described above. The 1950s through 1970s saw increased calls for diversification among NPS assets, an expansion of nearly all the extant classifications, and the creation of new classifications.⁵¹ Additional seashores joined Cape Hatteras, and National Lakeshores became a new classification.⁵² The NRA system expanded to include Golden Gate National Recreation Area outside San Francisco and Gateway National Recreation Area outside New York City.⁵³ 1974 saw the first National Preserves (areas where more impactful activities, such as hunting and resource extraction, are allowed) established in Florida (Big Cypress) and Texas (Big Thicket).⁵⁴ Additionally, the mid-1960s saw the passage of the National Historic Preservation Act,⁵⁵ the Wilderness Act,⁵⁶ the Wild and Scenic Rivers Act,⁵⁷ and the National Trails System Act,⁵⁸ all of which created new designations for the System and new responsibilities for NPS.⁵⁹

50. See MACKINTOSH & McDONNELL, *supra* note 15, at 54–59.

51. See *id.* at 64–83.

52. *Id.* at 73–75.

53. *Id.* at 78–79.

54. See *id.* at 89.

55. Pub. L. No. 89-665, 80 Stat. 915 (1966).

56. Pub. L. No. 88-577, 78 Stat. 890 (1964).

57. Pub. L. No. 90-542, 82 Stat. 906 (1968).

58. Pub. L. No. 90-543, 82 Stat. 919 (1968).

59. The National Historic Preservation Act created the National Register of Historic Places. § 101(a), 80 Stat. at 915. The Wilderness Act created the capacity to support wilderness areas on the public lands. § 2(a), 78 Stat. at 890. New wilderness areas are generally managed by the agency that was managing them prior to designation. § 2(b), 78 Stat. at 890. Rivers designated under the Wild and Scenic River Act can be managed by NPS, but can also be managed by other agencies or jointly by several agencies. See MACKINTOSH & McDONNELL, *supra* note 15, at 76; *River Mileage*

By the late 1960s, the bonanza for diversification had grown so extensive that NPS was running into management difficulties and becoming increasingly fragmented in the process. To deal with this problem, NPS created three guidance documents outlining best practices for managing natural, historic, and recreational areas.⁶⁰ (This system of management categorization was later abolished in favor of a “single management policy compilation addressing the range of characteristics each park possessed.”⁶¹) In response to the perceived fragmentation, Congress also passed the General Authorities Act⁶² in 1970, which clarified that the Service’s holdings were to be managed as “one national park system.”⁶³ Crucially, the Act did *not* suggest unifying the number of different classifications that had exploded over the past decade.⁶⁴ Indeed, the Act explicitly acknowledged that the System contained numerous “superlative natural, historic, and recreation areas” that were “distinct in character.”⁶⁵ Furthermore, section 2(b) explicitly acknowledges the continued existence of the classifications.⁶⁶

It is critical to note that, with the General Authorities Act, Congress had the opportunity to cut down on the classifications but chose not to do so, despite the fact that the classifications could be perceived as a good proxy for the issues that the Act was attempting to address. Far from suggesting that the System should consolidate its units, the Act explicitly acknowledges and embraces the value that flowed from diversity. Rather than attempting to simplify the hierarchy, it seems aimed at helping NPS manage a unified system that contained a multitude of different types of units.

Classifications for Components of the National Wild and Scenic River System, NAT’L WILD AND SCENIC RIVERS SYS. (Jan. 2015), <https://www.rivers.gov/documents/rivers-table.pdf> (listing designated Wild and Scenic Rivers and their managing agency). Trails designated under the National Trails System Act are similar—some become units of the System, while others do not. See MACKINTOSH & McDONNELL, *supra* note 15, at 77; *The National Trails System*, RECREATION.GOV (2014), http://www.recreation.gov/outdoors/Explore_Go_Lists/The-National-Trails-System.htm (listing designated National Historic Trails and National Scenic Trails, and their managing agency or association).

60. See DEP’T OF THE INTERIOR, ADMINISTRATIVE POLICIES FOR RECREATION AREAS (1968), reprinted in AMERICA’S NATIONAL PARK SYSTEM, *supra* note 40, at 336–42; DEP’T OF THE INTERIOR, ADMINISTRATIVE POLICIES FOR HISTORIC AREAS (1968), reprinted in AMERICA’S NATIONAL PARK SYSTEM, *supra* note 40, at 343–53; DEP’T OF THE INTERIOR, ADMINISTRATIVE POLICIES FOR NATURAL AREAS (1968), reprinted in AMERICA’S NATIONAL PARK SYSTEM, *supra* note 40, at 354–59; see also MACKINTOSH & McDONNELL, *supra* note 15, at 66.

61. MACKINTOSH & McDONNELL, *supra* note 15, at 88.

62. Act of Aug. 18, 1970, Pub. L. No. 91-383, 84 Stat. 825.

63. *Id.* at § 1, 84 Stat. at 825; see also RICHARD WEST SELLARS, PRESERVING NATURE IN THE NATIONAL PARKS: A HISTORY, 145–46 (1997).

64. See generally § 1, 84 Stat. at 825–27.

65. *Id.* at 825.

66. *Id.* at 826.

From the 1970s to the present, the System has continued to grow.⁶⁷ While there have been continued calls to reduce the number of classifications,⁶⁸ by the early 1990s there appeared to be general acknowledgement that the multitude of classifications contained within the System were not going away and that "the broad range of resources and functions now managed by NPS represents a permanent reality."⁶⁹

B. *The Modern Classification Hierarchy*

1. The facts.

Of the over 400 units in the System, only about 15 percent are actually national parks proper.⁷⁰ The other 85 percent fall into 1 of over 20 different designations.⁷¹ This figure, however, obscures the whole story, as some designations are singularly unique, such as the "President's Park (White House)" or the "National Mall and Memorial Parks." As mentioned in the Introduction, there are 19 general designations (97 percent of the units fall under 1 of these 19 designations, with the other 3 percent lumped together as "Other Designations"⁷²): National Battlefield, National Battlefield Park, National Military Park, National Battlefield Site, National Historical Park, National Historic Site, International Historic Site, National Lakeshore, National Memorial, National Monument, National Park, National Parkway, National Preserve, National Reserve, National Recreation Area, National River, National Wild and Scenic River and Riverway, National Scenic Trail, and National Seashore.⁷³ Somewhat

67. MACKINTOSH & McDONNELL, *supra* note 15, at 84–103.

68. See *supra* notes 5–10 and accompanying text.

69. NAT'L PARK SERV., NATIONAL PARKS FOR THE 21ST CENTURY: THE VAIL AGENDA (1992), reprinted in AMERICA'S NATIONAL PARK SYSTEM, *supra* note 40, at 435.

70. See *Facts & Figures*, *supra* note 2.

71. See *id.*

72. See *id.*

73. See NAT'L PARK SERV., *supra* note 3, at 13. It is worth noting that all the different units have at least one thing in common: they are all meant to be permanent. While units have been decommissioned or otherwise removed from the System, there do not appear to be any units that have an explicit sunset date. This need not be the case, however. We could envision a System that had parks with a variety of different lifespans. For example, we could have a system with permanent parks, five-year "trial" parks, ten-year monuments, and so forth. While the intricacies of such a framework are beyond the scope of this paper, there could be benefits to having such a framework in place. For instance, allowing for trial parks might lower the stakes of NPS expansion decisions and make local communities less wary of proposed units. This could be especially useful where larger expansions are concerned.

amusingly, "National Historic Site" is the most utilized classification (78 units), while "International Historic Site" is tied for the least (1 unit).⁷⁴

There are few rules governing the creation of units and how they will be classified. Aside from National Monuments, which can be created by presidential proclamation from federal public land,⁷⁵ and statutorily mandated boundary adjustments, new additions to the System need to be authorized by Congress.⁷⁶ Congress, however, is not bound by any rules when it comes to designations. In theory, it can call a new unit anything that it wants. In practice, the Department of the Interior has always played a large role in identifying and arguing for inclusions to the System and, since 1998, it has been required by law to make yearly recommendations of sites that Congress might want to consider for inclusion.⁷⁷ The initial identification of potential units comes from many different corners.⁷⁸ Classifications can come into play at different stages during this process—sometimes they are raised by local organizations,⁷⁹ sometimes they are suggested by Interior itself,⁸⁰ and sometimes they are raised by members of Congress.⁸¹

74. See *Facts & Figures*, *supra* note 2. The other classification with one unit is National Battlefield Site. See *id.*

75. See Antiquities Act of 1906, Pub. L. No. 59-209, § 2, 34 Stat. 225, 225 (codified as amended at 16 U.S.C. §§ 431–433 (2006)).

76. CAROL HARDY VINCENT, CONG. RESEARCH SERV. RS 20158, NATIONAL PARK SYSTEM: ESTABLISHING NEW UNITS 2 (2013).

77. *Id.* at 3.

78. *Id.* ("[L]ocal 'grassroots' preservation interest, elected officials, and professional evaluations. Another source has been the Secretary's annual list for Congress of damaged or threatened areas on the Registry of Natural Landmarks and the National Register of Historic Places.").

79. See, e.g., *New River Gorge National River, West Virginia, Joint Hearing on S 2866 and H.R. 12001 Before the Subcomm. on Parks and Recreation of the Senate Comm. on Energy and Nat. Res. and the Subcomm. on Nat'l Parks and Insular Affairs of the H. Comm. on Interior and Insular Affairs*, 95th Cong. 25 (1978) (statement of Sen. Jennings Randolph of West Virginia) [hereinafter *New River Gorge Hearing*].

80. See, e.g., *C&O Canal National Historical Park, Hearing on S 77 Before the Subcomm. on Public Lands of the S. Comm. on Interior and Insular Affairs*, 87th Cong. 25 (1961) (testimony of Conrad L. Wirth, Director, National Park Service) [hereinafter *C&O Canal Hearing*]; *National Park Service Hearings*, *supra* note 35, at 16.

81. See, e.g., *C&O Canal Hearing*, *supra* note 80, at 27 ("Up in North Dakota, in the Bad Lands, we have the Theodore Roosevelt Memorial Park, because Congressman Lemke at that time, whose bill it was, wanted the word 'memorial' put in it."); Press Release, Office of Rep. Sam Farr, House Passes Farr Bill to Establish Pinnacles National Park, <http://www.farr.house.gov/index.php/newsroom/press-releases/2010/895?task=view> (last visited Nov. 3, 2016) (describing the efforts of Congressman Sam Farr to have Pinnacles National Monument elevated to a national park).

2. The impact of the classifications.

While the General Authorities Act and subsequent management of the System has tried to emphasize that all the classifications are part of a cohesive system, it is clear that certain classifications take precedence, reflecting the reality of a functional hierarchy.⁸² At the top of this pecking order sit the national parks. In 2015, the national parks attracted almost 30 million more visitors than the next most popular designation (national recreation area).⁸³ Beyond the national parks it becomes harder to discern a “correct” ordering, although rough constructions are possible. One way to gauge the order is through the visitor numbers. After national parks, the most popular classifications are: national recreation areas at 46.2 million, national memorials at 40 million, national historical parks at 30.5 million, national parkways at 29.5 million, national monuments at 24.8 million, national seashores at 18.7 million, national historic sites at 9.9 million, “other” at 8.4 million, national rivers at 4.6 million, national military parks at 4.5 million, national lakeshores at 4.1 million, national preserves at 3.3 million, national battlefield parks at 2.9 million, national battlefields at 1.9 million, national wild and scenic rivers at 1.3 million, national reserves at 105 thousand, and (the lone) international historic site at 12 thousand.⁸⁴ National scenic trails and national battlefield sites are not reported for 2015.⁸⁵

Visitor numbers, however, are not the only method of ranking. Another axis would be age of designation as a proxy for prestige, in which case, the military parks and national monuments would sit atop the list after the national parks.⁸⁶ Yet another option for ranking would be by yearly revenue that the classification brings in. Regardless, the point is not so much to pinpoint a precise method of ranking as it is to demonstrate that the classifications are not created equal—they have clearly differing levels of prestige and differing levels of attraction to the traveling public.⁸⁷

82. See, e.g., MACKINTOSH & McDONNELL, *supra* note 15, at 104 (“All parklands are not created equal.”); RETTIE, *supra* note 5, at 73–85.

83. *Annual Recreation Visitation by Park Type or Region for: 2015 By Park Type*, NAT’L PARK SERV., [https://irma.nps.gov/Stats/SSRSReports/National%20Reports/Annual%20Visitation%20by%20Park%20Type%20or%20Region%20\(1979%20-%20Last%20Calendar%20Year\)](https://irma.nps.gov/Stats/SSRSReports/National%20Reports/Annual%20Visitation%20by%20Park%20Type%20or%20Region%20(1979%20-%20Last%20Calendar%20Year)) (last visited Nov. 3, 2016). Not every unit reports numbers for the annual statistical compilation.

84. *Id.*

85. *Id.*

86. See MACKINTOSH & McDONNELL, *supra* note 15, at 15–16, 32–35.

87. See also RETTIE, *supra* note 5, at 73–85.

A question that arises from the foregoing, however, is whether the classifications actually designate substantive differences between the units or are simply names devoid of content. As the following Subsections show, the classifications are not mere formalities—they tend to entail differences in physical attributes, differences in legal protections conferred by Congress, and differences in economic impact.⁸⁸

a. The descriptive importance of the classifications.

First, the classifications tend to correspond to certain physical attributes of a unit, such as size and attractions offered.⁸⁹ To provide a few examples from the official Index: national monuments tend to “preserve at least one nationally significant resource. [They are] usually smaller than a national park and lacks its diversity of attractions.”⁹⁰ National preserves exist “for the protection of certain resources” and tend to allow both resource extraction and activities like hunting.⁹¹ National lakeshores and seashores balance natural preservation with promoting “water-oriented recreation.”⁹² National memorials denote “areas that are primarily commemorative.”⁹³ The various military park designations tend to denote both the preservation of military history and the relative size of the protected area.⁹⁴ For example, national battlefields tend to be larger than national battlefield sites and national battlefield parks tend to be larger than national battlefields.⁹⁵ Finally, national parks “contain[] a variety of resources and encompass[] large land or water areas to help provide adequate protection of the resources.”⁹⁶

b. The legal importance of the classifications.

The classifications are also legally significant, in that they broadly denote the specific types of legal restrictions that are attached to the assets contained within the unit.⁹⁷ It is important to note, however, that there is no formally binding list indicating that a unit placed under X classification will have A, B, and C legal protections—Congress has the power to make whatever rules it wants for any particular unit. Further,

88. Again, in theory, Congress could call any unit anything it wants. Of course, it does not designate randomly.

89. See NAT'L PARK SERV., *supra* note 3, at 7–9.

90. *Id.* at 7.

91. *Id.*

92. *Id.*

93. *Id.* at 8.

94. *Id.* at 8. See also, COMAY, *supra* note 4, at 3–4, 5.

95. See COMAY, *supra* note 4, at 5.

96. NAT'L PARK SERV., *supra* note 3, at 7.

97. See COMAY, *supra* note 4, at 6–10.

as noted above, with the General Authorities Act, Congress recognized the System as a unified whole and emphasized that the Service's general policies and practices apply to every unit under its jurisdiction.⁹⁸ That said, Congress has "often followed precedents regarding the activities and management arrangements authorized in particular types of units. The designations have thus developed distinctive characteristics."⁹⁹ In other words, when Congress utilizes a particular classification, it tends to come with a certain package of legal attributes. While it would be overstating it somewhat to say that every single classification is a legal island, many of the classifications do carry distinct and significant legal consequences.

For example, the national park classification tends to denote the "most strictly protected units in the park system" and generally prohibits consumptive uses.¹⁰⁰ National monuments are legally distinct in that they are the only classification that can be created without congressional approval.¹⁰¹ National preserves tend to be places where Congress wanted to encourage preservation but also wanted to explicitly authorize consumptive activity.¹⁰² National reserves tend to be run in conjunction with state and local authorities to a degree not found within other classifications.¹⁰³ The national historical park and national historic site designations indicate that historical preservation takes precedence over natural preservation.¹⁰⁴ Thus, despite a lack of hard and fast rules when designating new units, the particular classification of a unit generally entails important legal consequences.

c. The economic importance of the classifications.

Finally, the classifications are economically significant.¹⁰⁵ Indeed, one of the chief reasons local boosters and congressmen advocate for "elevating" a monument to park status is because of the belief that the national park moniker will bring more visitors and more revenue to the surrounding community.¹⁰⁶ Beyond mere boosterism, this belief has

98. See LARY M. DILSAVER, *Transformation and Expansion: 1970–1980*, in AMERICA'S NATIONAL PARK SYSTEM, *supra* note 40, at 371–73; COMAY, *supra* note 4, at 1, 4.

99. COMAY, *supra* note 4, at 1.

100. *Id.* at 1–2.

101. *Id.* at 2.

102. *Id.*

103. *Id.*

104. *Id.* at 3.

105. *Id.* at 1, 11.

106. See, e.g., Editorial, *As We See It: Pinnacles National Park: Reaching for the Sky*, SANTA CRUZ SENTINEL (Aug. 11, 2010, 12:01 AM), <http://www.santacruzsentinel.com/general-news/20100811/as-we-see-it-pinnacles-national-park-reaching-for-the-sky..>

been borne out by subsequent research. For example, Stephan Weiler has written several papers exploring the hypothesis that different classifications have direct economic impacts. In particular, in a 2004 article he analyzed several national monument elevations as a type of natural experiment and used the visitation data from such elevations in order to gauge the economic impact of redesignation.¹⁰⁷ The paper “uncover[ed] a strong, robust, and statistically significant impact of redesignation on expected long-term visitation.”¹⁰⁸ A later paper by Weiler corroborated these findings and added that the new visitors generated after a designation change “seem to be reacting to the signal’s revelation of the site itself rather than responding to incremental changes in facilities.”¹⁰⁹ While no one appears to have done a full analysis of the relative economic impact of the different NPS classifications, Weiler’s work corroborates the notion that what a unit is called can have a significant impact on the revenue that the unit will generate.

C. *Existing Academic Commentary*

Legal academic commentary on NPS as a whole is somewhat scattered, and commentary on the classification scheme in particular is scarce. There are many articles that explore various aspects of the System, but there are few truly unifying themes within the literature. As such, the purpose of this Section is not so much to provide an exhaustive overview of what others have written as it is to give a general sense of the breadth of the extant commentary on the System. Unsurprisingly, authors have dealt with the System in the context of its role in public land law.¹¹⁰ A particularly interesting subtype of this strain of commentary focuses on how to protect System units from border threats (such as development activity, external pollution, and the growth of nearby urban areas).¹¹¹ Other authors have been attracted to a key

107. Stephan Weiler & Andrew Seidl, *What’s in a Name? Extracting Econometric Drivers To Assess the Impact of National Park Designation*, 44 J. REGIONAL SCI. 245, 245–47 (2004).

108. *Id.* at 261.

109. Stephan Weiler, *A Park By Any Other Name: National Park Designation as a Natural Experiment in Signaling*, 60 J. URB. ECON. 96, 105 (2006).

110. See, e.g., Marla E. Mansfield, *A Primer of Public Land Law*, 68 WASH. L. REV. 801, 842–46 (1993); Steven A. Hemmat, Comment, *Parks, People, and Private Property: The National Park Service and Eminent Domain*, 16 ENVTL. L. 935, 938 (1986).

111. See, e.g., Harry R. Bader, *Not So Helpless: Application of the U.S. Constitution Property Clause to Protect Federal Parklands from External Threats*, 39 NAT. RESOURCES J. 193, 205–09 (1999); John S. Davis, *The National Trails System Act and the Use of Protective Federal Zoning*, 10 HARV. ENVTL. L. REV. 189, 191–94 (1986); Craig L. Shafer, *The Unspoken Option to Help Safeguard America’s National Parks: An Examination of Expanding U.S. National Park Boundaries by Annexing Adjacent Federal Lands*, 35 COLUM. J. ENVTL. L. 57, 83–91 (2010); William J. Lockhart, *External Threats*

tension at the heart of the System: how to best balance the mandate to preserve the units with the mandate to provide for the public's enjoyment of those units.¹¹² Richard West Sellars has devoted an entire book to the history of this tension.¹¹³ This paper will explore the role the classification system plays in mediating this tension below in Part III.C.3. Beyond the park system specifically, other scholars have also written cogently on the role of preservation in the larger context of American environmental law.¹¹⁴ Outside legal academia, there are multiple books on the System from scholars, former rangers, and others that take in-depth looks at various aspects of the System. Alfred Runte, for example, has written several works about the history of the System.¹¹⁵ Dwight Rettie and James Ridenour have both written works focused on the structure and politics of NPS.¹¹⁶

As this short overview demonstrates, commentary on the System is all over the map.¹¹⁷ NPS is a topic that seems to, both fascinate and consistently provide new paths for exploration. The relative paucity of commentary on the classification hierarchy is, as a result, somewhat surprising. One of the few examples of such examination is Professor Robert Fischman's brief (and derisive) discussion of the hierarchy in *The Problem of Statutory Detail in National Park Establishment Legislation and Its Relationship to Pollution Control Law*, which focused primarily

to *Our National Parks: An Argument for Substantive Protection*, 16 STAN. ENVTL. L. J. 3, 45–71 (1997).

112. See, e.g., Robin W. Winks, *The National Park Service Act of 1916: "A Contradictory Mandate"?*, 74 DENV. U. L. REV. 575, 575 (1997); Harmony A. Mappes, Note, *National Parks: For Use and "Enjoyment" or for "Preservation"?* And the Role of the National Park Service Management Policies in that Determination, 92 IOWA L. REV. 601, 610–20 (2007); Robert B. Keiter, *The National Park System: Visions for Tomorrow*, 50 NAT. RESOURCES J. 71, 83–94 (2010); Jan G. Laitos, *National Parks and the Recreation Resource*, 74 DENV. U. L. REV. 847, 847, 855–56 (1997).

113. See generally SELLARS, *supra* note 63.

114. See, e.g., Jedediah Purdy, *American Natures: The Shape of Conflict in Environmental Law*, 36 HARV. ENVTL. L. REV. 169, 172–78 (2012); John Copeland Nagle, *The Scenic Protections of the Clean Air Act*, 87 N.D. L. REV. 571, 572–75 (2011).

115. See generally ALFRED RUNTE, NATIONAL PARKS: THE AMERICAN EXPERIENCE (4th ed. 2010) [hereinafter NATIONAL PARKS]; ALFRED RUNTE, TRAINS OF DISCOVERY: RAILROADS AND THE LEGACY OF OUR NATIONAL PARKS (5th ed. 2011) [hereinafter TRAINS OF DISCOVERY].

116. See generally RETTIE, *supra* note 5; JAMES M. RIDENOUR, THE NATIONAL PARKS COMPROMISED: PORK BARREL POLITICS & AMERICA'S TREASURES (1994).

117. Student authors have also been tempted by NPS, but tend to gravitate to more idiosyncratic topics. See, e.g., Alison Brooke Rubenstein, Comment, "The Whole World Is Jumpable", Except for the National Parks, 8 U. BAL. J. ENVTL. L. 150, 150–52 (2001); Paul A. Svoboda, Note, *Protecting Visitors to National Recreation Areas under the Federal Tort Claims Act*, 84 COLUM. L. REV. 1792, 1792–93, 1807–12 (1984); John C. Gallagher, III, Note, *Sweet Music Lost: Mountain Biking Banished from Federal Lands under the National Parks Service Organic Act of 1916*, 31 SUFFOLK U. L. REV. 665, 675–90 (1998).

on analogizing the growth of statutory detail in NPS legislation with similar growth in certain environmental statutes.¹¹⁸ Fischman's article touched on the classification hierarchy in the context of highlighting issues with the structure of the System circa 1997.¹¹⁹ Another (more sympathetic) example is Dwight Rettie's exploration of the hierarchy in his book on the structure of the System,¹²⁰ but his discussion (despite some analytical and normative elements) tends toward the descriptive.¹²¹ Additionally, as discussed above, Stephan Weiler has written several articles exploring the economic impacts of the classifications.¹²² Ultimately, while there is some analytic discussion of the classification hierarchy in the legal literature, it is curiously thin and all too brief.

* * *

As the preceding discussion demonstrates, the varying classifications are deeply rooted in both the history of the National Park System and the broader history of protected land in the United States. Furthermore, in addition to providing basic information about the physical attributes of the units, the classifications have important legal and economic consequences for their underlying units. These facts alone should give some pause to those who wish to see the classifications abolished or drastically simplified. That said, the question still remains: Are the classifications really worth it? The next two parts will explore this question in greater depth by looking at the normative question of whether we ought to have this hierarchy and the practical question of what work the hierarchy does for us.

II. WHY HAVE A CLASSIFICATION HIERARCHY?

The first and most obvious question is: Why should we maintain this complex classification hierarchy at all? A potential answer emerges when exploring whether the hierarchy has normative underpinnings, and focusing on a more refined version of the question: whether the hierarchy exists because of political horse-trading, or the tendency of agencies toward growth, or simply plain administrative convenience. The history discussed prior tells us the story of the hierarchy's evolution, but it does not give us much insight into why the classifications were

118. Fischman, *supra* note 5, at 779–81, 808–10.

119. *Id.* at 808–10.

120. RETTIE, *supra* note 5, at 40–85.

121. *See id.* at 40–61.

122. *See supra* notes 107 and 109, and accompanying text.

crafted in the first place. While horse-trading likely plays some role,¹²³ it is unlikely to be the entire story.

Instead, this Part argues that the hierarchy exists because of the changing normative relationship between Americans and the natural and built environment. More than a mere waste product of this changing relationship, the classification hierarchy sharply reflects the diversity of normative commitments that American culture holds toward the land. It acts as a proverbial repository for this complicated relationship with the land and provides an important outlet for expressing that relationship in a nuanced way. It bears stressing, however, that the core claim of this Part is *not* that normative commitments are the only motivator of the hierarchy. Rather, this Part is attempting to demonstrate that normative commitments played a highly significant role in the creation of the various classifications and that the classifications have reflected and continue to reflect those normative commitments.

This Part will develop the aforementioned thesis in two sections. Section A will touch on America's shifting attitudes toward the land and explore how those changing attitudes are reflected in the hierarchy. Most importantly, it will focus on legislation and legislative history in order to demonstrate that the motivations behind granting certain units certain classifications are reflective of robust and diverse normative commitments. Section B will explore the upshot of Section A's analysis: that the hierarchy is an important repository of differing normative commitments to our natural and built environments.

A. *The Classification Hierarchy and America's Relationship with Its Natural and Built Heritage*

1. Shifting historical attitudes toward the built and natural environment.

Many commentators have noted that the attitude of Americans toward their land has shifted drastically since the Founding. Perhaps most famously, Frederick Jackson Turner's *The Frontier in American History* charted how westward expansion changed American culture.¹²⁴ In the post-World War II period, Roderick Frazier Nash catalogued the complex evolution of the concept of wilderness throughout American history, from its European roots to the view propounded by modern day

123. Cf. RIDENOUR, *supra* note 116, at 16–19.

124. See generally FREDERICK JACKSON TURNER, *THE FRONTIER IN AMERICAN HISTORY* (1920).

environmentalists.¹²⁵ Closer to the direct topic at hand, Alfred Runte, at the beginning of his important history of the national parks, states that the mid-nineteenth century brought with it a changing perception that “the very identity of the United States required that its natural wonders remain in public ownership”¹²⁶ and that, from an original policy of scenic preservation, “[g]radually, perceptions of the environment changed. Ultimately, wilderness preservation and wildlife protection gained near equivalency with protecting natural wonders.”¹²⁷ The ambivalent relationship between Americans and the land has also provided a rich vein for authors of fiction to mine: Wallace Stegner won the Pulitzer Prize for *Angle of Repose*, which grapples with the impact of the West on the American psyche,¹²⁸ and Edward Abbey’s *The Monkey Wrench Gang* chronicles an explosive clash of values regarding proper care for the environment in the Southwest.¹²⁹

More saliently for this paper, Professor Jedediah Purdy has argued that for “over more than two centuries Americans have created and acted on four distinct understandings of their place in the natural world[:.]” providential republicanism, progressive management, romantic epiphany, and ecological interdependence.¹³⁰ The first understanding, typified by viewing the “natural world [as] made for productive use” dominated until the late nineteenth century.¹³¹ The second and third, typified by understanding the natural world as “reliably serv[ing] human ends only with expert governance” and seeing certain aspects of nature as “elicit[ing] essential human experiences,” respectively, became prevalent in late nineteenth and early twentieth century, around the presidencies of William McKinley and Theodore Roosevelt.¹³² The fourth, which sees “the world [as] a system of deeply permeable systems” gained steam starting in the 1960s.¹³³ Now, we live in a world where “earlier views persist as new ones arise, both through their legislative offspring and as organizing ideas for competing groups.”¹³⁴

Lest one believe that these shifts were confined to our attitude toward the natural environment, major changes were also occurring in America’s attitude toward the built environment. In the late nineteenth

125. See generally RODERICK FRAZIER NASH, *WILDERNESS AND THE AMERICAN MIND* (4th ed. 2001).

126. NATIONAL PARKS, *supra* note 115, at 1.

127. *Id.*

128. See generally WALLACE STEGNER, *ANGLE OF REPOSE* (1971).

129. See generally EDWARD ABBEY, *THE MONKEY WRENCH GANG* (1975).

130. Purdy, *supra* note 114, at 172–74.

131. *Id.* at 173.

132. See *id.* at 173–74.

133. *Id.* at 174.

134. *Id.*

century, the country was becoming more aware of—and more concerned with—preservation of archaeological ruins.¹³⁵ Around the same time, a keen interest in preserving and commemorating battlefields also arose.¹³⁶ In the early- to mid-twentieth century, a growing nationalist interest in America’s early years led to a newfound concern with preserving historic buildings and historic districts across the country, leading to the first historic preservation ordinance in Charleston, South Carolina in 1931.¹³⁷ On the federal level, this burgeoning interest is evidenced by the Historic Sites Act.¹³⁸

Regardless of whether one endorses the specific accounts provided by the authors touched on above, it is clear that tectonic changes have occurred in the nation’s attitude toward both the natural and built environment. Since Yellowstone’s creation there has been a slow, but significant, diversification of shifting normative attitudes toward the land and the structures upon it.

2. The hierarchy reflects the diversity of normative commitments.

a. Shifting justifications for new classifications.

The System was expanding alongside these changes in attitude, and the connection between the normative and practical readjustments can be seen in the legislative language creating new units. Put simply, the generation of different classifications reflects the parallel generation of new and complex attitudes toward the land.

The legislation creating the first national park states that Yellowstone “is hereby reserved and withdrawn from settlement, occupancy, or sale under the laws of the United States, and dedicated and set apart as a public park or pleasuring-ground for the benefit and enjoyment of the people.”¹³⁹ These normative predilections were preserved in other national parks legislation from this era; the legislation authorizing the creation of Mount Rainier National Park in 1899, for example, states that the land is “hereby dedicated and set apart as a public park, to be known and designated as the Mount Rainier National

135. See Ronald F. Lee, *The Antiquities Act of 1906* 21–28 (1970), <http://npshistory.com/publications/antiquities-act-1906.pdf>.

136. See Ronald F. Lee, *The Origin & Evolution of the National Military Park Idea* (1973), https://www.nps.gov/parkhistory/online_books/history_military/nmpidea3.htm (noting that the battlefield preservation movement started “in the 1870s”).

137. See *Charleston and Preservation*, NAT’L PARK SERV., <https://www.nps.gov/nr/travel/Charleston/preservation.htm> (last visited Apr. 29, 2016).

138. See *supra* notes 44–46 and accompanying text.

139. See Act of Mar. 1, 1872, ch. 24, § 1, 17 Stat. 32, 32.

Park, for the benefit and enjoyment of the people.”¹⁴⁰ Even after the National Park Service was created and national parks became a more formalized unit, the normative language in the bills creating the parks remained consistent. The 1929 act creating Grand Teton National Park contained the same language as that used in the Yellowstone legislation.¹⁴¹ After World War II, the normative language remained remarkably similar to that which came before, even as it became more specific: The 1971 act creating Voyageurs National Park (in northern Minnesota) starts by stating that the park was created “to preserve, for the inspiration and enjoyment of present and future generations.”¹⁴² It then proceeds to say that the preservation is directed at “the outstanding scenery, geological conditions, and waterway system which constituted a part of the historic route of the Voyageurs who contributed significantly to the opening of the Northwestern United States.”¹⁴³ In essence, the national park classification has always been extremely capacious. It is aimed generally at preserving scenic land, but it is also broadly nonspecific. It is a broad classification that can accommodate different interests and goals.

In contrast, legislation addressing preservation of civil war battlefields evinces vastly different concerns. The legislation creating the first national military park, at Chickamauga (in Georgia and Tennessee), begins by proclaiming that the park is intended “for the purpose of preserving and suitably marking for historical and professional military study.”¹⁴⁴ Similarly, the legislation that created the Fredericksburg and Spotsylvania National Military Park (in Virginia) proclaimed that the purpose was to “commemorate the Civil War battles” and “to mark and preserve for historical purposes the breastworks, earthworks, gun emplacements, walls, or other defenses or shelters used by the armies in said battles.”¹⁴⁵ Although the few additional military parks created after World War II utilized stock language as to the purpose of the designation,¹⁴⁶ the earlier acts that shaped the character of the designation clearly evidence idiosyncratic normative goals consistent

140. Act of Mar. 2, 1899, ch. 337, § 1, 30 Stat. 993, 993.

141. Act of Feb. 26, 1929, Pub. L. No. 817, § 1, 45 Stat. 1314, 1316.

142. Act of Jan. 8, 1971, Pub. L. No. 91-661, 84 Stat. 1970, 1970.

143. *Id.*

144. Act of Aug. 19, 1890, ch. 806, § 1, 26 Stat. 333, 333 (codified as amended at 16 U.S.C. § 424 (2012)).

145. Act of Feb. 14, 1927, ch. 127, § 1, 45 Stat. 1091, 1091 (codified as amended at 16 U.S.C. § 425 (2012)). *See also* Act of June 21, 1934, ch. 694, § 1, 48 Stat. 1198, 1198 (codified as amended at 16 U.S.C. § 430j (2012)) (establishing Monocacy National Military Park (Maryland)).

146. *See, e.g.*, Act of July 20, 1956, ch. 653, § 1, 70 Stat. 592, 592 (codified as amended at 16 U.S.C. § 430aa (2012)) (creating Pea Ridge National Military Park (Arkansas)).

with the interests of the battlefields preservation movement. Unlike the national park classification, the military park classification is aimed at a specific set of goals—commemoration and education. It is not flexible and it is not capacious. Rather, it reflects a particular idea of how the country should preserve its military history.

The language of the Antiquities Act reflects yet a different set of concerns attaching to the national monument classification:

That the President of the United States is hereby authorized, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments¹⁴⁷

Unlike the national parks or the military parks, the national monument designation is geared toward preservation for historical and scientific purposes. Moreover, these normative concerns have remained remarkably consistent in the proclamations creating national monuments. Both the 1906 proclamation creating Grand Canyon National Monument and the 1996 proclamation creating Grand Staircase-Escalante National Monument¹⁴⁸ take special heed of the scientific reasons for classifying the unit as a national monument (the latter, however, is significantly more loquacious).¹⁴⁹ Once again, the classifications reflect a distinctive view of how certain parts of our heritage should be preserved.

Lest one believe that this trend ended with World War II, post-war legislation placing new units under new categories also demonstrates new normative concerns entering the picture. The legislation authorizing Point Reyes National Seashore, for example, says that the unit is established “in order to save and preserve, for purposes of public recreation, benefit, and inspiration, a portion of the diminishing seashore of the United States.”¹⁵⁰ Again, markedly different normative concerns

147. Antiquities Act of 1906, Pub. L. No. 59-209, § 1, 34 Stat. 225, 225 (codified as amended at 16 U.S.C. §§ 431–433 (2006))).

148. Interestingly, Grand Staircase is one of the few national monuments not managed by NPS—it is under the Bureau of Land Management’s purview. See *Grand Staircase-Escalante National Monument*, BUREAU OF LAND MGMT., http://www.blm.gov/ut/st/en/fo/grand_staircase-escalante.html (last visited Nov. 3, 2016).

149. Compare Proclamation No. 794, 35 Stat. 2175, 2175 (1908) (“[T]he Grand Canyon of the Colorado River, which is situated upon public land within the Grand Canyon National Forest, in the Territory of Arizona, is an object of unusual scientific interest, being the greatest eroded canyon within the United States”), with Proclamation No. 6920, 3 C.F.R. § 64, 64–66 (1996), *reprinted in* 110 Stat. 4561, 4561–63 (1996).

150. Act of Sept. 13, 1962, Pub. L. No. 87-657, § 1, 76 Stat. 538, 538 (codified as amended at 16 U.S.C. § 459c (2012)). See also Act of Sept. 28, 1962, Pub. L. No. 87-

underlie the national seashore classification unlike the other classifications discussed above.

One might argue that the classifications simply flow from the nature of the thing being preserved rather than from differing normative commitments: Of course all seashores are for recreation, and of course all historical sites are for education. The system, however, contains many units that have the same underlying nature, but are classified differently. For example, Dry Tortugas National Park and Cumberland Island National Seashore have different designations even though they are both offshore units comprised of historical sites, marine attractions, and beaches.¹⁵¹ Similarly, Fort McHenry National Monument and Fort Laramie National Historic Site both preserve former military installations despite occupying different spaces within the hierarchy.¹⁵² As such, the argument that the classifications simply map onto the nature of the thing being preserved lacks explanatory force.

Instead, the above analysis strongly suggests that the different classifications reflect different normative concerns. It would have been easy enough for Congress to add new classifications or new units to the system with the same stock phrase. Indeed, in some cases Congress utilized generic language when creating new units. The legislation creating Cape Hatteras National Seashore and some of the military parks utilizes stock “for the benefit and enjoyment of the people” and nothing else.¹⁵³ Yet, very often, Congress chose to distinguish between different types of classifications with substantially different normative language. Furthermore, individual congressmen often seem to believe that the classifications are imbued with distinguishable normative flavors and care about what a unit is called.¹⁵⁴ For example, in early 2016, the House

712, § 1, 76 Stat. 650, 650 (codified as amended at 16 U.S.C. § 459d (2012)) (establishing Padre Island National Seashore); Act of Sept. 11, 1964, Pub. L. No. 88-587, § 1(a), 78 Stat. 928, 928 (codified as amended at 16 U.S.C. § 459e (2012)) (establishing Fire Island National Seashore). *But see* Act of Aug. 17, 1937, ch. 687, § 1, 50 Stat. 669, 669 (codified as amended at 16 U.S.C. § 459 (2012)) (establishing Cape Hatteras National Seashore with no unique normative language).

151. Compare *Dry Tortugas National Park, Florida*, NAT'L PARK SERV., <https://www.nps.gov/drto/index.htm> (describing the wonders of the Dry Tortugas National Park), with *Cumberland Island National Seashore, Georgia*, NAT'L PARK SERV., <https://www.nps.gov/cuis/index.htm> (describing the activities and options available at Cumberland Island National Seashore).

152. Compare *Fort McHenry National Monument and Historic Shrine, Maryland*, NAT'L PARK SERV., <https://www.nps.gov/fomc/index.htm> (describing Fort McHenry), with *Fort Laramie National Historic Site, Wyoming*, NAT'L PARK SERV., <https://www.nps.gov/foia/index.htm> (describing Fort Laramie).

153. See, e.g., Act of Aug. 17, 1937, ch. 687, § 1, 50 Stat. 669, 669 (codified as amended at 16 U.S.C. § 459 (2012)).

154. See, e.g., *Current National Park Bills: Hearing on S. 1633, S. 1993, S. 2207, S. 2254, S. 2262, S. 2329, S. 2502, S. 2512, H.R. 2197, H.R. 2627, H.R. 3332, H.R. 3998*

of Representatives passed two bills reclassifying System units. One would change Ocmulgee National Monument to Ocmulgee Mounds National Historical Park.¹⁵⁵ Rep. Sanford Bishop, the drafter of the legislation, stated that the name change would “increase name recognition and draw additional visitors.”¹⁵⁶ The other would change Martin Luther King, Jr. National Historic Site to Martin Luther King, Jr. National Historical Park.¹⁵⁷ The hearing memo prepared for the markup of the bill noted that the National Historical Park designation was more appropriate for larger sites than the Historic Site designation.¹⁵⁸ It also would have been easy enough for Congress to have simply never added to the classifications and just have called everything a national park with specific instructions attached. It did not, however, pursue this path.

Instead, the legislative work related to preservation of the nation’s natural and built heritage strongly suggests that the classification hierarchy reflects nuanced normative concerns. Such legislation indicates that the changes in the hierarchy are connected with the century and a half of shifting attitudes regarding the proper use and preservation of that heritage.

* * *

At this juncture, a skeptical reader might think that the above analysis is a type of just-so story. It is worth noting, however, (in addition to the legislative evidence presented above) that striking normative commitments are found in national park systems across the world. For example, the legislation authorizing New Zealand’s equivalent of a national park system begins with the declaration that

Before the Subcomm. on Nat’l Parks of the S. Comm. on Energy and Nat. Res., 110th Cong. 4, 9, 17–18, 22 (2008) [hereinafter *Thomas Edison Hearings*] (discussing two bills proposing to change Edison National Historic Site to Thomas Edison National Historical Park—the proposal was ultimately approved by Congress).

155. See Ocmulgee Mounds National Historical Park Boundary Revision Act of 2016, H.R. 482, 114th Cong. (2016) (redesignating Ocmulgee National Monument as Ocmulgee Mounds National Historical Park).

156. Sanford Bishop, *Testimony of Rep. Sanford D. Bishop, Jr. on H.R. 482, the Ocmulgee Mounds National Historic Park Boundary Revision Act of 2015*, H. COMM. ON NAT. RES., U.S. H.R. (June 16, 2015), <http://naturalresources.house.gov/uploadedfiles/bishoptestimony.pdf>.

157. See Martin Luther King, Jr. National Historical Park Act of 2016, H.R. 2880, 114th Cong. (2016).

158. *H.R. 2880 (Rep. John Lewis, D-GA), “Martin Luther King, Jr. National Historical Park Act of 2015” Markup Memorandum*, H. COMM. ON NAT. RES., U.S. H.R. 2 (Jan. 29, 2016), http://naturalresources.house.gov/uploadedfiles/hr_2880_hearing_memo.pdf.

It is hereby declared that the provisions of this Act shall have effect for the purpose of preserving in perpetuity as national parks, for their intrinsic worth and for the benefit, use, and enjoyment of the public, areas of New Zealand that contain scenery of such distinctive quality, ecological systems, or natural features so beautiful, unique, or scientifically important that their preservation is in the national interest.¹⁵⁹

Similarly, legislation authorizing the Canadian national parks states,

The national parks of Canada are hereby dedicated to the people of Canada for their benefit, education[,] and enjoyment, subject to this Act and the regulations, and the parks shall be maintained and made use of so as to leave them unimpaired for the enjoyment of future generations.¹⁶⁰

Additionally, a glance at some state park system mission statements reflects similar normative commitments underlying those systems.¹⁶¹ While this is far from an exhaustive survey, it suggests that normative commitments play a large role in the very idea of park systems. Were this not the case, we would have good reason to be skeptical of the idea that the classification hierarchy within one of those systems was also founded on normative commitments. The broad infusion of such commitments into the broader structure of park systems, however, lends credence to the idea that the hierarchies within those systems are similarly infused.

B. *The Classification Hierarchy as a Repository of Diverse Normative Commitments*

The analysis above suggests that, far from being an administrative accident, the classification hierarchy reflects the different ways Americans feel about the various components of the country's natural and built history. In this capacity, it acts as an important repository for the nuanced and sometimes conflicting normative compacts that American culture has with its heritage. The multitude of classifications exists not simply because some group didn't want to call X parcel of land

159. National Parks Act 1980, pt 1, s 4(1) (N.Z.).

160. Canada National Parks Act, S.C. 2000, c.32, s 4(1) (Can.).

161. See, e.g., *About Us*, CAL. DEP'T OF PARKS AND RECREATION, http://www.parks.ca.gov/?page_id=91, (last visited Nov. 3, 2016) (describing the state park system's mission: "To provide for the health, inspiration and education of the people of California by helping to preserve the state's extraordinary biological diversity, protecting its most valued natural and cultural resources, and creating opportunities for high-quality outdoor recreation."); *Mission*, N.C. STATE PARKS, <http://www.ncparks.gov/more-about-us/about-parks-recreation/mission>, (last visited Nov. 3, 2016).

a national park but because there are (and long have been) shifting commitments to natural and built locales. We feel differently about the Grand Canyon than we do about Independence Hall. We feel differently about Yosemite than we do about Point Reyes. We feel differently about Gettysburg than we do about the White House. The classifications we put these sites under are indicative of these diverse feelings and serve an essential role in facilitating their expression.

This Section will draw the idea of the hierarchy's role as a repository into sharper focus by engaging in two explorations. First, it will demonstrate that normative underpinnings are not simply par for the course for federal land by looking at other federal classifications. Second, it will examine how those closest to the creation of the System units think about the classifications. Taken together, these two explorations strongly suggest that the classification hierarchy exists as a unique repository of normative commitments.

1. The NPS classification hierarchy is special among federal land classification systems.

After reading the above analysis, one might wonder whether NPS units are all that special; perhaps normative commitments are at the foundation of every form of federal land classification. It appears, however, that the park units are in fact special in having a formally sanctioned classification system (that is, a classification system aided and abetted by Congress) rooted in deeply normative concerns. First, as demonstrated below, normative underpinnings are the exception—not the rule—for federal land classifications. Other subsets of federal land are classified according to overwhelmingly descriptive and practical considerations, rather than normative ones. Moreover, given the history and analysis in Section A, to the extent there are other forms of federal land classification with normative foundations, it seems likely that NPS's classification hierarchy has one of the stronger foundations, if not the strongest. When viewed together, these two points suggest that the NPS classification hierarchy is not simply another way of subdividing land but, rather, that it plays an important—perhaps essential—role vis-à-vis American culture's normative attitudes toward the land. This Subsection will attempt to draw out this point by looking at the foundations of three other types of federal land classification systems.

A good example of a federal classification without a normative underpinning is found in the national laboratory system. There are seventeen units, the majority of which are simply designated "national

laboratories.”¹⁶² The classifications ascribed to them outside of “National Laboratory” appear to be ad hoc, generally a result of having a particle accelerator or specializing in some particular area.¹⁶³ Indeed, they are not really classifications as much as just descriptive names. But even if we were to take these names as a subclassification system, they are not motivated by strong normative considerations. The government does not authorize the creation of a national laboratory because of different cultural judgments about the relative normative value of particle accelerators. Rather, the national laboratory classifications are motivated by prosaic judgments about what kind of science the country needs to study and what is feasible given the budget from Congress.¹⁶⁴

Post office facilities provide another good example. There are different categories of facilities, but those classifications are administratively created based purely on function:¹⁶⁵ main post office, classified unit, finance unit, and network distribution center are all examples.¹⁶⁶ Congress does not designate certain post offices as first class post offices because it feels that first class mail should get a higher priority. The president does not declare a building to be a national media mail post office dedicated to the delivery of media mail based on the belief that such mail needs to be specially preserved. The post office calls a building by a certain name because of where it fits into the postal delivery process. It is true that post office names are often utilized for commemorative purposes,¹⁶⁷ but such descriptive names are not a type of

162. See *Laboratories*, U.S. DEP’T OF ENERGY, <http://science.energy.gov/laboratories/> (last visited Nov. 3, 2016).

163. See *id.* (listing labs with names such as Princeton Plasma Physics Laboratory and Ames Laboratory).

164. See *The U.S. Department of Energy’s Ten-Year-Plans for the Office of Science National Laboratories: FY 2015*, U.S. DEP’T OF ENERGY 1 (2015), http://science.energy.gov/~media/lp/pdf/laboratory-planning-process/SC_Consolidated_Laboratory_Plans.pdf. The Department of Energy’s plan described the motivation for the national laboratories as follows:

The DOE national laboratories were created as a means to an end: victory in World War II and national security in the face of the new atomic age. Since then, they have consistently responded to national priorities: first for national defense, but also in the space race and more recently in the search for new sources of energy, new energy-efficient materials, new methods for countering terrorism domestically and abroad, and addressing the challenges established in the President’s American Competitive Initiative (ACI) and the Advanced Energy Initiative (AEI).

Id.

165. See KEVIN R. KOSAR, CONG. RESEARCH SERV., R40719, POST OFFICE AND RETAIL POSTAL FACILITY CLOSURES: OVERVIEW AND ISSUES FOR CONGRESS 7 (2009).

166. See *Glossary of Postal Terms*, U.S. POSTAL SERV. 39, 83, 128, 143 (July 2013), <http://about.usps.com/publications/pub32.pdf>.

167. See, e.g., *Post Office Names*, U.S. POSTAL SERV., http://about.usps.com/publications/pub100/pub100_031.htm (last visited Nov. 3, 2016).

classification.¹⁶⁸ They are more analogous to the “Grand Canyon” half of the Grand Canyon National Park label than to the “national park” half. Unlike the System’s hierarchy, the classifications of the postal system are not reflective of any particular values or judgments. Normative concerns do not motivate the postal service classifications—purely descriptive concerns do, and the classification system the Postal Service uses reflects that.

Even the classifications of the other federal land agencies generally reflect practical concerns. Land under the auspices of the U.S. Fish and Wildlife Service, for example, features multiple classifications, but these classifications largely reflect administrative and managerial concerns (similar in some respects to the postal service system discussed above).¹⁶⁹ Land under the Forest Service is largely grouped into the national forest and national grassland category, which are differentiated based on whether the site is primarily prairie.¹⁷⁰ Land managed by the Bureau of Land Management (BLM) generally remains unclassified.¹⁷¹ Although some of the land managed by the other agencies falls into categories reflecting normative considerations (e.g., BLM manages the “National Landscape Conservation System”¹⁷²), these categories reflect a relatively small portion of the managed land (as compared to NPS, where nearly all the land is grouped under the classification hierarchy)¹⁷³ and

168. Cf. RETTIE, *supra* note 5, at 58 (distinguishing between classifications and descriptive names).

169. See Robert L. Fischman, *The National Wildlife Refuge System and the Hallmarks of Modern Organic Legislation*, 29 *ECOLOGY*. L. Q. 457, 464–70 (2002) (noting that National Wildlife Refuge System unit categories has “opportunistic origins”); *Alphabetical Refuge List (one page)*, U.S. FISH & WILDLIFE SERV., <https://www.fws.gov/refuges/profiles/byletterALL.cfm> (last visited Nov. 3, 2016).

170. *Find A Forest By State*, U.S. FOREST SERV., http://www.fs.fed.us/recreation/map/state_list.shtml (last visited Nov. 3, 2016); *Recreational Activities: Congressionally Designated Special Areas*, U.S. FOREST SERV., http://www.fs.fed.us/recreation/programs/facts/special_areas.shtml (last visited Nov. 3, 2016) (listing the handful of “special designations” under Forest Service administration and noting that the majority are located on land that is already part of a national forest); *National Grasslands*, U.S. FOREST SERV., <http://www.fs.fed.us/grasslands/> (last visited Nov. 3, 2016).

171. See RANDALL K. WILSON, *AMERICA’S PUBLIC LANDS: FROM YELLOWSTONE TO SMOKEY BEAR AND BEYOND*, 180–83 (2014).

172. *National Conservation Lands*, BUREAU OF LAND MGMT., http://www.blm.gov/wo/st/en/prog/blm_special_areas/NLCS.html (last visited Nov. 3, 2016).

173. See, e.g., *Public Land Statistics 2015*, BUREAU OF LAND MGMT., 1, 13–15, 197–98, http://www.blm.gov/public_land_statistics/pls15/pls2015.pdf (2015) (indicating that the National Landscape Conservation System comprises approximately 13% of total BLM land). Compare *Recreational Activities*, *supra* note 170 (listing the handful of “special designations” under Forest Service administration and noting that the majority are located on land that was already part of a national forest) [hereinafter *Recreational Activities*], with *Table 1 – National and Regional Areas Summary*, U.S. FOREST SERV., <http://www.fs.fed.us/land/staff/lar/LAR2015/Table%2001%20-%20National%20and>

largely share classifications found in the NPS context (e.g., national monument and national recreation area).¹⁷⁴ Interestingly, much of the land placed under one of the shared classifications was so designated from the 1960s onward, well after the classifications were established for NPS.¹⁷⁵ This indicates that NPS's classification hierarchy may serve as an inspiration to other federal land agencies and provides further support for the argument that the System's classifications possess a unique normative element that is not generally found in other federal classification hierarchies. This is not to say, of course, that System units are the only areas where we find a normatively motivated classification hierarchy, but rather that such a motivation is not an absolute rule among federal classification hierarchies and that the System likely has the most robust such hierarchy.¹⁷⁶

Normative value does not inhere in all forms of federal land. As the above discussion has shown, the classifications for other forms of federal land are more grounded in prosaic concerns and reflect normative neutrality. The classifications reveal practical motivations—the focus is on the work/management that is (or will be) done on the land or on simple description. We don't feel too differently about the local federal courthouse than we do about the local federal office building or the local post office, except insofar as different types of business are transacted within each. And from that descriptive mode of thinking, a classification is derived. It is classification based on administrative efficiency and correct description. This is markedly different from how we think about National Park System units. As demonstrated by the legislative analysis above, remarkably normative thinking plays a primary role in the classifications for System units. In short, unlike the classification

%20Regional%20Area%20Summary.pdf (Oct. 17, 2015) (indicating that Congressionally Designated Special Areas comprise approximately 3% of total U.S. Forest Service land).

174. See, e.g., *Recreational Activities*, *supra* note 170 (listing national monuments and national recreation areas); *Resources and Statistics*, BUREAU OF LAND MGMT., http://www.blm.gov/wo/st/en/prog/blm_special_areas/NLCS/nlcs_resources_.html (last visited Nov. 3, 2016) (listing national monuments, wild and scenic rivers, and national scenic trails).

175. See *Recreational Activities*, *supra* note 170; *National Monuments*, BUREAU OF LAND MGMT., http://www.blm.gov/wo/st/en/prog/blm_special_areas/NLCS/monuments.html (last visited Nov. 3, 2016) (noting that Grand Staircase-Escalante National Monument, established in 1996, was the first national monument "entrusted" to BLM).

176. For another example of an area of federal land that involves normative classification, see *America's Byways*, FED. HIGHWAY ADMIN., <http://www.fhwa.dot.gov/byways/> (last visited Nov. 3, 2016) ("America's Byways® is the umbrella term we use for the collection of 150 distinct and diverse roads designated by the U.S. Secretary of Transportation. America's Byways include the National Scenic Byways and All-American Roads.").

systems for many other forms of federal land, the different NPS classifications express different sets of deeply held values.

2. Those who are closest to the creation of new units appear to understand that the classifications reflect diverse normative commitments.

Further support for the idea of the classification hierarchy as a normative repository comes from looking at the materials behind NPS unit designations and the way individuals deeply engaged with the System think about the classifications. This exploration is motivated by the question of whether all the language in the legislation surveyed above *really* reflects deeply held normative commitments and is not just window dressing. If it is nothing more than rhetorical fluff, the repository idea does not have much of a leg to stand on. The legislative record on NPS units, however, demonstrates that the major actors often understand that there are meaningful differences between the national park unit designations and, moreover, that they actually *care* about these differences.¹⁷⁷ This recognition, in turn, strongly suggests that the legislative language accompanying the classifications is not just meaningless fluff. To the contrary, it provides further support for the idea that the different classifications are expressive of different sets of values.

One particularly telling example occurred during the 1961 Senate hearings on what would become C&O Canal National Historical Park (a unit near Washington, DC that was finally designated as such in 1971).¹⁷⁸ At the time, the C&O Canal had been designated a national monument, but there were ongoing efforts to get Congress to authorize the area as a national historical park.¹⁷⁹ While attempting to defend the National Park Service's request that Congress authorize more land for the proposed park, Conrad Wirth, then-Director of the National Park Service, was faced with questions about the site's classification.¹⁸⁰ He initially described NPS's position on its classification: "We feel its classification because of the scenic grandeur along the Potomac River classifies this as a national historical park, rather than as a monument."¹⁸¹ A little later he added:

177. See, e.g., *Thomas Edison Hearings*, *supra* note 154, at 4, 9, 17–18, 22 (involving discussion of a bill to change the name of Edison National Historic Site to Thomas Edison National Historical Park).

178. See generally *C&O Canal Hearing*, *supra* note 80.

179. See *id.* at 22, 25.

180. See *id.* at 24–28.

181. *Id.* at 24.

Mr. Chairman, we have areas which Senator Allott has indicated, and there are other areas in the National Park System that ought to have a different classification in order to denote its main purpose. We feel that this area has the scenic and historic values so that it ought to be in that classification of a national historic park.¹⁸²

Director Wirth also, however, engaged in a rather long back and forth with the senators as to the distinctions between the various classifications in the System. He admitted that, occasionally, classifications were "moved around for expediency" and that the park service had considered trying to cut them down.¹⁸³ At the same time, he explained that parks are "outstanding scenic areas," that monuments are "areas that were of historic, prehistoric, or scientific importance," that historic parks "must have real historic value."¹⁸⁴ Director Wirth also plainly stated that "every time [NPS] establish[es] a new area we try to put it in the category we believe it ought to be in."¹⁸⁵ There are four things to notice about this exchange. First, it displays a clear sensitivity on NPS's part toward the classifications. In the eyes of NPS, these are not throwaway names, but distinctions with real weight. After all, it would have been easy for NPS to go to Congress with a request that they simply expand the boundaries of the existing national monument, but NPS chose not to do so. Instead, Director Wirth sat in front of a panel of senators and explained why NPS thought C&O Canal should be designated as a national historical park rather than a national monument.¹⁸⁶

Second, although the senators are somewhat confused by the nomenclature, they do not question the existence of the classification.¹⁸⁷ After Director Wirth's explanation, they appear to understand that the hierarchy serves an important purpose despite its occasionally confusing nature. Senator Allott goes so far to say that "we ought to let the people call them anything they want to," and that he just wants to see NPS "draw some lines of classification under which people could proceed."¹⁸⁸ Third, NPS and the senators appear to embrace the classification hierarchy despite the headaches and confusion it can cause. All parties involved recognize that the hierarchy does serve an important normative function. Fourth, despite NPS's irritation with the classification

182. *Id.* at 25.

183. *Id.* at 27.

184. *Id.* at 26-27.

185. *Id.* at 27.

186. Driving this point home, later in the hearing Director Wirth resists a proposed classification change to Rock Creek Park. *See id.* at 33-34.

187. *See id.* at 24-28.

188. *C&O Canal Hearing, supra* note 80, at 27-28.

hierarchy, they cannot successfully displace it—even though they are the single organization in the best position to do so.¹⁸⁹ Perhaps unsurprisingly, this is a pattern repeated in NPS history. The 2005 edition of an official NPS history expresses mild irritation at the confusion engendered by the hierarchy but goes on to spend the next ninety-plus pages explaining it in great detail.¹⁹⁰

A similar, though less far-reaching, conversation can be seen in the Senate hearings on the creation of Canyonlands National Park in southeastern Utah. Unlike the C&O Canal, Canyonlands had not been a national monument prior to its classification as a national park. During the extensive, multiyear hearings on the creation of Canyonlands, both members of Congress and interested third parties displayed a keen awareness that the classifications were much more than just names on a page. For example, during one hearing, Senator Frank Moss exclaimed: "In my opinion we do need this much land to constitute an area worthy of National Park status. . . . We are talking here about something that is unique and superlative. It is not just that we want to add another recreational area or add more land."¹⁹¹ At a hearing in 1964 the question about whether multiple use areas should be designated inside the park was hotly debated, leading to some nuanced discussion about what precisely the national park classification meant.¹⁹² D. James Cannon, a representative from Utah's tourism board, told the Committee that his

preference would have been to make this a national recreation area with three of the areas specifically designated for special status within the National Park System. In other words designated as national parks. However, this seemed to be unacceptable. So, in answer to your question, I feel that the most important thing we can do is establish the national park.¹⁹³

At an executive session of the subcommittee dealing with the Canyonlands bill, Representative Thomas Morris demonstrated a sharp sensitivity to the meaning of the national park classification:

189. See *id.* at 27.

190. Compare MACKINTOSH & McDONNELL, *supra* note 15, at 8–9, with *id.* at 12–107.

191. *Hearing on H.R. 8573 and H.R. 8574 Before the Subcomm. on Nat'l Parks of the H. Comm. on Interior and Insular Affairs*, 87th Cong. 43 (1962) [hereinafter *Canyonlands May 1962 House Hearing*] (statement of Sen. Frank Moss).

192. See, e.g., *Canyonlands National Park, Utah: Hearing on H.R. 6925 and S. 27 Before the Subcomm. on Nat'l Parks of the H. Comm. on Interior and Insular Affairs*, 88th Cong. 28–29 (1964) (statement of Calvin Black, Mayor of Blanding, Utah and Member of Blanding Sportsmen's Club).

193. *Id.* at 18–19 (testimony of D. James Cannon, Director of the Utah State Tourist and Publicity Council).

I will not support either of these bills unless the section which involves multiple use is deleted from them. I do not think a national park should have grazing in it, timber cutting in it, mining in it. If it does, it is not a national park; and, if you have this go on, you don't need a national park.¹⁹⁴

Other hearings evince similar sensitivity to the normative implications of a classification.¹⁹⁵ In a similar vein, further support for the normative repository idea can be seen in the desire of congressmen to see their local national monument elevated to national park status.¹⁹⁶ While that desire is also tied up in the economic benefits that the national park designation brings, it also belies a recognition that the classifications are more than mere placeholders and that they are intertwined with discrete sets of values.

* * *

Taken together, the language found in much of the legislation placing NPS units under different parts of the classification hierarchy, the uniqueness of the classification hierarchy within the realm of federal property management, and the attitude of those closest to unit designations suggest that the hierarchy exists in large part because of American culture's shifting and complicated normative commitments to its national heritage, and that the hierarchy acts as a repository for those commitments. The hierarchy is neither a mere administrative accident nor the simple product of political expediency. Interestingly, in being such a repository, the classifications also appear to serve an important role as an outlet for the shifting values chronicled in Section A. As such, they both allow the National Park System to shift as new attitudes toward the land take prominence and help facilitate the continuous reevaluation of how we value our heritage.

While this exploration disposes of the idea that the classification hierarchy exists for purely administrative reasons (or for bad reasons), a

194. *Executive Session on H.R. 6925 Before the Subcomm. on Nat'l Parks of the H. Comm. on Interior and Insular Affairs*, 88th Cong. 4-5 (1964) [hereinafter *Executive Session on H.R. 6925*].

195. See, e.g., *Point Reyes National Seashore: Hearing on S. 476 before the Subcomm. on Public Lands of the S. Comm. on Interior and Insular Affairs*, 87th Cong. 197-205 [hereinafter *Point Reyes Hearing*] (testimony of Conrad Wirth, Director of the National Park Service).

196. See, e.g., *Effigy Mounds National Monument and Great Sand Dunes National Park: Hearing on S. 1643 and S. 2547 Before the Subcomm. on Nat'l Parks, Historic Preservation, and Recreation of the S. Comm. on Energy and Nat. Res.*, 106th Cong. 2 (2000) (prepared statement of Sen. Ben Nighthorse Campbell); House Passes Farr Bill, *supra* note 81.

nagging concern remains: even if the hierarchy is an important normative repository, perhaps the country would still realize more benefits from its dissolution or drastic simplification. Perhaps the benefits realized from the normative foundation of the hierarchy are not worth the hierarchy's broader costs. Part III will tackle this issue directly by exploring the practical benefits generated by the classification hierarchy.

III. WHAT DO WE GET OUT OF THE CLASSIFICATION HIERARCHY?

This Part addresses whether there are practical goods that flow from having the hierarchy in place that might be lost were NPS or Congress to abolish or simplify it. Specifically, this Part suggests that the classification hierarchy generates benefits in at least three broad categories. First, it reinforces the mainline environmental legal structure. Second, it acts as a form of economic signaling that can help guide growth. Third, it creates opportunities for legislative tailoring that benefit interest groups, localities, and NPS. This Part will explore each of these categories in turn. The goal is to demonstrate that the classification hierarchy generates substantial benefits aside from the normative ones explored above, and to reinforce the notion that governmental actors should hesitate before tinkering with the hierarchy.

Overall, the mechanism that generates these practical benefits is the relationship between the classifications and the uses allowed under the classifications. Congress' power to define the hierarchy has resulted in a two-way street: in some cases the classifications have defined the uses, while in other cases the uses have defined the classifications. That is to say, because there is no formal list of predefined characteristics that each classification must possess, the meanings of the classifications have been shaped by a two-way relationship. Sometimes, a particular use that some party wants allowed on a piece of land has governed the ultimate designation.¹⁹⁷ Other times, the classification chosen restricts certain uses, despite the contrary desires of parties to the unit creation process.¹⁹⁸ The result of this alternating, two-way relationship playing out for over a century is that individual classifications have come to be linked with discrete and relatively stable sets of characteristics.¹⁹⁹

In other words, the classifications have become information-rich signals: they contain an abundance of data about particular parcels of land and are not simply cheap talk. The government has invested a good

197. See, e.g., *infra* notes 285–2871 and accompanying text.

198. See, e.g., *supra* note 194 and accompanying text; *infra* notes 297–299 and accompanying text.

199. See COMAY, *supra* note 4, at 1.

deal of time and energy into specifying the characteristics of the classifications over the course of many years,²⁰⁰ so that what Congress calls something actually conveys a wealth of information—uses, visitation levels, type of visitor attracted, and so on. The practical benefits discussed in this Part flow from this aspect of the classifications. The reinforcement of environmental law is a direct example of the classification-use linkage. The classifications tend to be linked to some degree of environmental protection, which, in turn, tends to reinforce the environmental laws. The economic signaling is a particular example of the classifications acting as information-rich signals. As a result of the classification-use link, particular units can generally signal what uses are encouraged and discouraged through their classification. Legislative tailoring is another particular example of the classifications acting as information-rich signals. Without the specific classification-use links embodied by particular classifications, there would be little room for tailoring. In short, another way of thinking about the key conclusion of this Part is that by functioning as information-rich signals for particular characteristics and, especially, the particular uses allowed and disallowed within the unit, the classifications generate substantial practical benefits.

A. *The Hierarchy and Environmental Law*

The first benefit that the classification hierarchy generates is that it helps sustain the larger framework of environmental laws. It does this by creating two types of focal points. First, the classification hierarchy creates focal points for environmental regulation through explicit and implicit incorporation into environmental laws. Second, the hierarchy creates focal points for broader environmental activism. This Section will explore each of these impacts in turn.

1. The classification hierarchy's creation of regulatory focal points.

- a. National Environmental Policy Act²⁰¹ (NEPA).

By encouraging the spread of National Park System units, the classification hierarchy creates more focal points for NEPA's application. NEPA is one of the nation's most important environmental statutes, as it touches almost every significant action a federal agency can take. Indeed, section 102(c) commands that whenever a federal agency wishes to take any kind of "major Federal action," it needs to prepare a

200. Cf. *C&O Canal Hearing*, *supra* note 80, at 24–28.

201. National Environmental Policy Act, Pub. L. No. 91-190, 83 Stat. 852 (1970).

detailed report meeting certain requirements.²⁰² The National Park Service is not exempt from these requirements—it must file Environmental Impact Statements like every other federal agency.²⁰³ “Major action” has been interpreted to be a rather capacious term—it does not include activities like buying a new coffee maker, but it does include activities like the creation of fire management plans.²⁰⁴ As such, NEPA’s requirements can be extremely burdensome and agencies often try to avoid them when they can. But even activities that do not count as major actions and are subject to a “categorical exclusion,”²⁰⁵ such as replacing a concrete floor, often entail some documentation from the acting agency.²⁰⁶

In order to fully appreciate the interaction between NEPA and the classification hierarchy, it is important to first recognize that the hierarchy facilitates the creation of National Park System units in places the System might not otherwise reach. Given the traditional association of the classification “national park” with the so-called scenic “crown jewels,” such as Yellowstone, Grand Canyon, Yosemite, and Grand Tetons, it seems reasonable to believe that, if the System were limited to one “national park” category, it is less likely that we would have added many of the urban park units, standalone rivers and trails, or some of the smaller, more discrete historic sites (to choose a few examples).²⁰⁷ The early history of the classification hierarchy itself seems to support this intuition. When the country had only a handful of classifications, they

202. *Id.* § 102(2)(C)(i)–(v), 83 Stat. 852, 853 (1970).

203. *Id.* § 102(2), 83 Stat. at 853.

204. See Fire Management Plan, Final Environmental Impact Statement, Grand Canyon National Park, AZ, 74 Fed. Reg. 39,709, 39,709–10 (Aug. 7, 2009). See also *Chelsea Neighborhood Ass’ns v. U.S. Postal Serv.*, 516 F.2d 378, 382 (2d Cir. 1975) (“It is clear that NEPA was designed to cover almost every form of significant federal activity.”); *Scientists’ Inst. for Public Info., Inc. v. Atomic Energy Comm’n*, 481 F.2d 1079, 1088–89 (D.C. Cir. 1973).

205. NAT’L PARK SERV., NATIONAL PARK SERVICE NEPA HANDBOOK 29 (2015), https://www.nps.gov/orgs/1812/upload/NPS_NEPAHandbook_Final.pdf (“[Categorical exclusions] describes a category or type of actions that do not cumulatively or individually have the potential for significant environmental impacts. If an action fits within a CE it is not exempt from NEPA; however, it is exempted from the requirement to prepare an EA or EIS.”) (internal citations omitted).

206. See, e.g., *Replace Concrete Floor in Miller Shed (S-06) for Safety, Retain the Exterior Walls, and Replace Shingles on the Dean Shed (S-13a)*, NAT’L PARK SERV., <http://parkplanning.nps.gov/projectHome.cfm?projectID=46086> (last visited Nov. 3, 2016) (describing the project to which a categorical exclusion applied). For a complete listing of all NPS projects potentially subject to NEPA requirements, see *Planning, Environment & Public Comment (PEPC)*, NAT’L PARK SERV., <http://parkplanning.nps.gov/publicHome.cfm> (last visited Nov. 3, 2016).

207. Cf. *New River Gorge Hearing*, *supra* note 79, at 25–26 (statement of Sen. Jennings Randolph); *Point Reyes Hearing*, *supra* note 195, at 197–205; *C&O Canal Hearing*, *supra* note 80, 18–28.

tended to be rather rigidly confined to certain subtypes of units—national parks tended to be scenic and remote, national monuments tended to be sites of scientific or archaeological value, national battlefields were sites of military engagements, and national memorials were commemorative structures.²⁰⁸ Although there were exceptions,²⁰⁹ we do not see many units straying from type in this period (for instance, we generally don't see battlefields or historic buildings being called national parks). As new classifications were made in the 1930s and beyond, however, they did not go unused—instead, we see a corresponding growth of units from new areas previously underrepresented in the park system (such as urban areas).²¹⁰ This need not have been the case, as Canada's experience with the national landmark designation shows—there is currently only one national landmark in the Canadian park system, which was created nearly thirty years ago.²¹¹ In other words, the creation of new classifications appears to encourage interested parties to seek unit inclusions that they might not have otherwise been able to get because of the relative path dependency of the older classifications. As such, the menu of options that the classification hierarchy provides for—and the option to add new classifications to the hierarchy—encourages the extension of the System into a range of areas. This is not to say that the classification hierarchy is the *only* reason that we see the System expanding into certain areas; rather, the hierarchy reduces the costs of such expansion by making it easier to swallow. In an important way then, the proliferation of classifications appears to have aided and abetted the addition of sites to the System that fall outside the classic national park paradigm.

In extending the reach of the System, the classification hierarchy simultaneously extends NEPA to areas where it might not otherwise reach, such as sensitive parts of major cities, urban seashores, and suburbs.²¹² This is especially true on the east coast, where there is less federal land.²¹³ Indeed, even areas that are managed primarily for

208. See MACKINTOSH & McDONNELL, *supra* note 15, at 15–16, 31–35.

209. See *id.* at 29–31 (describing the National Capital Parks).

210. See *id.* at 46–83.

211. See *Pingo Canadian Landmark: Park Management*, PARKS CAN., <http://www.pc.gc.ca/eng/docs/v-g/pingo/sec6.aspx> (last visited Nov. 3, 2016) (describing the history of Canada's single national landmark and noting that the program for establishing such landmarks "was never implemented").

212. See, e.g., *Fire Island National Seashore White-tailed Deer Management Plan*, NAT'L PARK SERV., <http://parkplanning.nps.gov/projectHome.cfm?projectID=28897> (last visited Nov. 3, 2016) (describing an Environmental Impact Statement prepared for a Long Island park unit an hour away from Manhattan).

213. *Compare Federal Land and Indian Reservations*, NAT'L ATLAS, http://nationalmap.gov/small_scale/printable/images/pdf/fedlands/fedlands3.pdf (visited

historic purposes rather than ecological ones are subject to NEPA’s strictures.²¹⁴ As such, major changes to these sites will have to undergo a review to determine the environmental impact of such changes, and even some smaller changes will have to be analyzed in order to determine whether further action is required under NEPA or whether the activity is subject to a categorical exclusion. Even if NPS does not change their activity as a result of the NEPA reports (and they are not required to do so²¹⁵), the outcome is still a relatively robust series of documents in which the environmental consequences of agency activities are—at the very least—considered and catalogued. Ultimately, in facilitating the expansion of the National Park System to the country’s nooks and crannies—to places the system might not otherwise have reached—the classification hierarchy has also facilitated NEPA’s expansion and the heightened environmental consciousness that comes with it.

b. The Clean Air Act²¹⁶ (CAA).

The classification hierarchy also plays an important role in the functioning of the Clear Air Act. System units are among the handful of select areas singled out for special recognition in key parts of the Act. As with NEPA, the hierarchy lengthens the reach of strong CAA protections by facilitating the extension of the System to a diverse set of areas.

The NPS classification hierarchy plays a role even in the purposes section of the Act: one of the stated purposes of the Act is “to preserve, protect, and enhance the air quality in national parks, national wilderness areas, national monuments, national seashores, and other areas of special national or regional natural, recreational, scenic, or historic value.”²¹⁷ But it plays an even more integral role a few sections later.

Although the CAA is octopus-like in its ambitions, one of its chief goals is the “prevention of significant deterioration” of the air quality of certain parts of the country.²¹⁸ Title I, part C of the CAA addresses the mechanics of this goal. Generally, preventing significant deterioration of

Nov. 3, 2016), with *U.S. Population Density (By Counties)*, U.S. CENSUS BUREAU, www.census.gov/dmd/www/pdf/512popdn.pdf (last visited Nov. 3, 2016).

214. See, e.g., *General Management Plan/Environmental Assessment: Boston African-American National Historic Site*, NAT’L PARK SERV., <http://parkplanning.nps.gov/projectHome.cfm?projectID=11252> (last visited Nov. 3, 2016).

215. See *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989) (“[I]t is now well settled that NEPA itself does not mandate particular results, but simply prescribes the necessary process.”).

216. Clean Air Act, Pub. L. No. 88-206, 77 Stat. 392 (1963) (codified as amended at 42 U.S.C. §§ 7401–7671 (2006)).

217. 42 U.S.C. § 7470(2) (2006).

218. See *id.* §§ 7470–7479, 7491, 7492.

air quality is achieved through State Implementation Plans (SIPs), which are usually created by the individual states and subject to federal approval.²¹⁹ While states were given a good deal of leeway over how to construct their SIPs, there were four areas that received the highest degree of protection (Class I) and could not be changed: "(1) international parks, (2) national wilderness areas which exceed 5,000 acres in size, (3) national memorial parks which exceed 5,000 acres in size, and (4) national parks which exceed six thousand acres in size, and which are in existence on [August 7, 1977]."²²⁰ Furthermore, there are certain areas that the states can *only* redesignate as Class I or Class II (receiving heightened protection²²¹) rather than as Class III:

(1) an area which exceeds ten thousand acres in size and is a national monument, a national primitive area, a national preserve, a national recreation area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore, and

(2) a national park or national wilderness area established after [August 7, 1977], which exceeds ten thousand acres in size.²²²

Additionally, any areas classified as Class I are also subject to stringent rules designed to maintain high visibility.²²³

As the above indicates, the classification hierarchy plays an important role in extending the protections of the CAA. The classifications explicitly support the Clean Air Act by providing the absolute pivot points around which SIPs have to be constructed. As in the NEPA context, by allowing units to join the System that might not otherwise have been let in under a simpler system, the classification hierarchy directly facilitates the extension of the CAA protections to a greater range of specific places when states revise their SIPs. Furthermore, it also helps ensure that the CAA will cover a broader area than it otherwise might. To the extent that the air quality over an NPS unit is dependent on the air quality of the surrounding area, the categorization of such a unit as Class I or Class II means that the air quality of the surrounding area will also have to be maintained and improved. Nor should one think that these provisions are simply

219. See *id.* §§ 7410, 7471.

220. *Id.* § 7472(a), 7474.

221. *Id.* § 7473.

222. *Id.* § 7474.

223. *Id.* § 7491.

throwaway language—organizations have been very willing to utilize the provisions found here in the ongoing battle over clean air standards.²²⁴

c. Unit Enabling Legislation.

The classification hierarchy also facilitates the extension of tailored environmental protection to specific units. For example, when a river is designated as a "Wild and Scenic River" it is not done through the passage of standalone legislation,²²⁵ but rather via amendment of the original Wild and Scenic River Act.²²⁶ As such, automatic protections attach to it: the river is to be maintained as wild, scenic, or recreational;²²⁷ dams cannot be built upon the portion thus designated (or on portions of the river directly affecting the designated part);²²⁸ and the river is automatically withdrawn from "entry, sale, or other disposition."²²⁹ Similarly, when a piece of federal land is designated as a national park or national monument the designation tends to entail strict restrictions on activities such as grazing and prospecting, and a gradual phasing out of current consumptive uses.²³⁰ As seen in the discussion of the CAA, it can also entail heightened protection under the marquee environmental laws.²³¹ On the other hand, when land is designated as a national preserve, it tends to entail a more balanced approach to preservation—there is a mandate to preserve the ecological integrity of the preserve, but there is also no absolute prohibition on many consumptive uses.²³²

224. See, e.g., Christa Cherava et al., *Cleaning Up Haze: Protecting People and America's Places*, NAT'L PARKS CONSERVATION ASS'N, (Jan. 31, 2012) <https://www.npca.org/resources/2468-cleaning-up-the-haze>.

225. It is also possible for the Secretary of the Interior to include rivers that are already protected at the state level within the Wild and Scenic River system without congressional approval. See INTERAGENCY WILD AND SCENIC RIVERS COORDINATING COUNCIL, DESIGNATING RIVERS THROUGH SECTION 2(A)(II) OF THE WILD AND SCENIC RIVERS ACT 1-2 (2007). While rivers designated via this process generally receive the same protections as those designated via congressional action, such rivers receive no federal funds and are not federally managed. See *Id.*

226. See, e.g., Act of Oct. 27, 1992, Pub. L. No. 102-536, § 1, 106 Stat. 3528, 3528 (designating segments of Great Egg Harbor river as part of the Wild and Scenic Rivers system under the control of the National Park Service).

227. Wild and Scenic Rivers Act § 2(a), Pub. L. No. 90-542, § 2(a), 82 Stat. 906, 906 (1968).

228. *Id.* § 7(a), 82 Stat. at 913.

229. *Id.* § 8(a), 82 Stat. at 915.

230. See, e.g., Act of Sept. 12, 1964, Pub. L. No. 88-950, § 3, 78 Stat. 934, 938 (establishing Canyonlands National Park and allowing grazing to continue for a set period of time); COMAY, *supra* note 4, at 1-2.

231. See *supra* notes 217-224 and accompanying text.

232. See COMAY, *supra* note 4, at 2.

It would be overstating it to say that a designation necessarily entails a certain degree of environmental protection (Congress can always qualify its designations, after all²³³). It is, however, accurate to say that a classification often entails a certain kind of and degree of environmental protection. As such, one way to look at the classification of an NPS unit is as something similar to the definitions section found in a statute: designating a unit under X classification tends to entail a certain range of environmental protections and restrictions that are unique to that designation (if not in character than at least in degree). Another way to look at the classifications is as something akin to an off-the-rack suit: placement under one of them tends to provide a kind of roughly tailored environmental protection, which can be subsequently fitted to the needs and uses of the unit.

2. The classification hierarchy's indirect impact.

The classification hierarchy also has an indirect impact on environmental law, the key intuition behind which was previously alluded to when discussing NEPA. Just as the classification hierarchy facilitates the extension of NEPA to areas it might not otherwise reach, so too does it facilitate broader environmental activism. That is, outside of the direct application of the environmental laws by the government, the classification hierarchy can help create focal points for broad-based environmental activism in a range of areas.

That the national parks are focal points for non-governmental environmental activism is uncontroversial. The Grand Canyon attracted national attention—and specific mention in the Clean Air Act—due to the unfortunate levels of haze in the park.²³⁴ California parks such as Yosemite have long attracted the attention of organizations like the Sierra Club.²³⁵

233. And has occasionally done so. See, e.g., Act of Sept. 12, 1964, Pub. L. No. 88-950, § 3, 78 Stat. 934, 938; SAMUEL J. SCHMIEDING, FROM CONTROVERSY TO COMPROMISE TO COOPERATION: THE ADMINISTRATIVE HISTORY OF CANYONLANDS NATIONAL PARK 81-114 (2008) (discussing the political history of Canyonlands National Park, including provisions for environmentally damaging activities inserted into earlier versions of the final statute).

234. See Keith Schneider, *Grand Canyon Haze Plan Is Disputed*, N.Y. TIMES, Feb. 2, 1991, <http://www.nytimes.com/1991/02/02/us/grand-canyon-haze-plan-is-disputed.html>; 42 U.S.C. § 7492(f) (2006) (establishing a Grand Canyon visibility transport commission).

235. See, e.g., *Hetch Hetchy: Timeline of the Ongoing Battle over Hetch Hetchy*, SIERRA CLUB, <http://vault.sierraclub.org/ca/hetchhetchy/timeline.asp> (last visited Nov. 3, 2016) (describing the Sierra Club's long involvement in the fight over Hetch Hetchy—a now flooded valley that is inside Yosemite National Park).

The situations recounted above, however, are famous examples involving well-known national parks. In addition to these examples are numerous scenarios where units grouped under other classifications became the focal points for protective activism. The Sierra Club's fight to save the relatively unknown Dinosaur National Monument in the 1950s—a fight that the Sierra Club leveraged to increase their membership—is one of the better-known examples, but there are others.²³⁶ General Grant National Memorial in New York City was a "hangout for drunks, dope smokers, the dispossessed" by the early 1990s—despite being the grave of a president, it was derelict and neglected.²³⁷ By the mid-1990s a group had formed dedicated to cleaning up the area and forcing NPS to take care of the memorial.²³⁸ The group sued the agency and, eventually, successfully forced NPS to renovate the memorial.²³⁹ In a similar vein, Cape Hatteras National Seashore has attracted groups interested in strictly regulating off-road driving in order to protect the ecology of the area.²⁴⁰ Harpers Ferry National Historical Park (in West Virginia) has attracted the attention of the National Parks Conservation Association (NPCA) because of planned development near the park.²⁴¹ Similarly, planned development near C&O Canal National Historical Park has attracted the involvement of the Sierra Club.²⁴² Further confirming the intuition suggested by the examples above, in 2011 the NPCA issued a report noting serious issues

236. See *History: Sierra Club Timeline*, SIERRA CLUB, <http://sierraclub.org/history/timeline.aspx> (last visited Nov. 3, 2016) ("1951 - In a campaign viewed as a test of the integrity of national parks and a major challenge for the Sierra Club, Club decides to fight to protect Dinosaur National Monument from two dams proposed by the federal government; a special edition of the Sierra Club Bulletin covers the issue for members."). See also WALLACE STEGNER, *THIS IS DINOSAUR: ECHO PARK COUNTRY AND ITS MAGIC RIVERS* (1955).

237. Larry McShane, *Grant Won the Civil War, But His N.Y. Tomb Is Losing the Urban Wars*, L.A. TIMES, Dec. 19, 1993, http://articles.latimes.com/1993-12-19/news/mn-3462_1_civil-war.

238. See Rick Hampson, *150 Years After Civil War, Descendants Deal with Legacy*, USA TODAY (May 9, 2011) http://usatoday30.usatoday.com/news/nation/2011-04-07-civil-war-anniversary-ancestors_N.htm (recounting how Ulysses Grant's descendant led the charge to clean up his memorial).

239. See *id.*

240. See *Cape Hatteras National Seashore Wildlife Protection: Protecting Wildlife on Cape Hatteras*, S. ENVTL. L. CTR., <https://www.southernenvironment.org/cases-and-projects/cape-hatteras-national-seashore-wildlife-protection> (last visited Nov. 3, 2016).

241. See Dave McMillion, *Harpers Ferry on List of Most Endangered Battlefields*, HERALD-MAIL.COM (Mar. 14, 2007), http://articles.herald-mail.com/2007-03-14/news/25071656_1_harpers-ferry-civil-war-preservation-trust-battlefields.

242. See *C&O Canal National Historical Park Is Once Again Threatened: Development Park Service to Hold Informational Meeting on Boathouse Zone on December 13*, SIERRA CLUB: WASHINGTON DC CHAPTER, http://action.sierraclub.org/site/MessageViewer?em_id=220982.0&dlv_id=189777 (last visited Nov. 3, 2016).

at many of the System's then-394 units.²⁴³ Several of their recommendations involved actions that would have impacts beyond any specific unit's boundaries.²⁴⁴

The point of the foregoing is that the System's units—from the well-known to the obscure—can act as focal points for environmental activism. The classification hierarchy facilitates the creation of units in places where they might not otherwise be. As such, environmental activists end up in places that might not otherwise receive a lot of attention from those activists. Finally, lest one believe that environmental groups are only moving to protect beautiful areas, there is evidence that units from a variety of areas attract protective attention. As mentioned above, Harper's Ferry National Historical Site has attracted the attention of the NPCA, even though few would claim that Harper's Ferry counts among the most "desirable" parcels within the System.²⁴⁵ Indeed, the very existence of the NPCA—a large interest group dedicated to preserving units across the National Park System—pushes back against the notion that activists are only looking to protect beautiful land. What's important to the NPCA is not that the land is "beautiful," but that it is in the National Park System; the raw fact of designation itself is galvanizing. Moreover, as the above examples demonstrate, such units do not just attract attention from locals with an environmental bent—they capture the involvement of the old, mainstream environmental groups who have the expertise, clout, and resources to generate pro-environmental change, and get the government to enforce the law. In short, by facilitating the creation of a variety of park units, the classification hierarchy enables the spread of environmental activism to a range of diverse areas.

B. *The Classification Hierarchy and Economic Signaling*

The second benefit that the classification hierarchy generates is that it acts as an economic signal. In its most general form, this is not a new idea; authors have previously noted that the designation of a unit acts as an information signal to potential visitors, telling tourists roughly what to expect.²⁴⁶ This was likely invaluable in the era before the Internet, and it

243. See generally *The State of America's National Parks*, NAT'L PARKS CONSERVATION ASS'N (June 20, 2011), <https://www.npca.org/resources/2259-the-state-of-america-s-national-parks>.

244. See *id.* at 59–64.

245. See, e.g., NATIONAL PARKS, *supra* note 115, at 13 (noting that "Thomas Jefferson declared the Potomac River at Harpers Ferry 'worth a voyage across the Atlantic.' Long afterward, the problem for American nationalists was convincing themselves that Harpers Ferry lived up to the claim").

246. See RETTIE, *supra* note 5, at 58.

can still serve a valuable function by acting as an informational proxy that negates the need for further research on the part of the would-be tourist. Further, the work of some social scientists has shown that the name of a unit also acts as a kind of economic signal for tourism—all else equal, some classifications are simply more popular than others.²⁴⁷ This section will explore the idea that the signaling effect of the classification hierarchy extends beyond visitors to commercial interests.

1. The classifications as economic signals.

There is ample evidence that the mere presence of a national park unit boosts a local economy by generating substantial revenue and jobs for the area.²⁴⁸ It follows that the classifications play a role in a unit's economic impact by being information-rich signals that quickly tell commercial entities about which types of businesses might thrive (or fail) in the vicinity. Just as a unit's classification acts as a signal to visitors about what activities and experiences the park will offer, it also acts as an economic signal to businesses. For example, the national park classification might signal that a hiking equipment store—or, more prosaically, a roadside water and ice stand—would be successful in the area. In contrast, the national historical park classification might indicate that a bookstore or a souvenir shop would be more successful. In a way, the classifications act as a kind of resume for the particular unit—shorthand for data such as type of visitor, amount of visitors, encouraged activities, discouraged activities, extant competition, potential competition, and more. This makes a great deal of intuitive sense—if the classifications act as information-rich signals to everyday visitors, then it stands to reason that they do the same for sophisticated commercial enterprises that are looking to set up near a park unit. Indeed, to the extent we think that the classifications are, at the very least, moderately reflective of the expected visitation levels for the underlying units, it follows that the classifications are economic signals: visitation levels act as a rough analogue for economic activity in the vicinity of a unit, with more visitors generating greater economic activity. By the mere act of

247. See *supra* notes 105–109 and accompanying text. See also *supra* text accompanying notes 82–85.

248. See, e.g., *National Park's Economic Impacts*, HEADWATERS ECON., <http://headwaterseconomics.org/dataviz/national-park-service-units> (last visited Nov. 3, 2016) (cataloguing the economic impact of every System unit on local economies); *National Parks Serve as Powerful Economic Engines for Local Communities, Supporting 252,000 Jobs*, U.S. DEP'T OF THE INTERIOR (Feb. 25, 2013), <http://www.doi.gov/news/press/releases/national-parks-serve-as-powerful-economic-engines-for-local-communities-supporting-252000-jobs.cfm>.

signaling visitor traffic, the classifications act as robust economic signals to businesses about the level of economic activity a unit can support.

As noted above, however, the classifications provide more detailed information than simple visitation levels. As far as this second suggestion goes, it is worth noting that Congress is not randomly designating units—as Part II discussed, the classifications are reflective of general characteristics about the place designated and what that place has in common with other areas so designated. Given this, it also makes intuitive sense to believe that the classifications could signal to observers somewhat detailed information that reveals the more specific types of economic activity a unit can support.

It is worth stressing, however, that the particular mix of commercial activity found anywhere—and especially in a city—does not lend itself to a singular explanation. The purpose of this Subsection is not to claim that the classifications crowd out other economic signals. Rather, it is simply to suggest that the classifications act as a more robust signal than it might seem at first—they quickly provide businesses with information that helps them figure out the economic activity that the unit will support.

Direct evidence of the relationship between the classifications and business growth is difficult to come by. Though organizations have concluded that “[b]eyond the benefits of tourism dollars, national park gateway communities attract skilled labor and businesses that are drawn to the scenic and recreational amenities that parks offer,”²⁴⁹ many of the formal studies on the economic impact of the national park units focus on overall visitor spending and jobs created rather than tracking the types of businesses that move into and out of an area near different classifications over time.

With that said, the basic intuition that classifications can act as economic signals is supported by research conducted by Headwaters Economics, a nonprofit research group in Bozeman, Montana that focuses on public lands studies.²⁵⁰ In 2013, the group performed a comparative analysis of areas that had combinations of national parks and national recreation areas as part of a report on a potential designation near Penobscot and Piscataquis Counties in Maine.²⁵¹ The study states

249. *Made In America: Investing in National Parks for Our Heritage and Our Economy*, NAT'L PARKS CONSERVATION ASS'N 19 (Nov. 10, 2011), <https://www.npca.org/resources/2372-made-in-america-investing-in-national-parks-for-our-heritage-and-our>.

250. *See About Us*, HEADWATERS ECON., <http://headwaterseconomics.org/about> (last visited Nov. 3, 2016).

251. *See A Comparative Analysis of the Economies of Peer Counties with National Parks and Recreation Areas to Penobscot and Piscataquis Counties, Maine*,

that while “[p]eer National Park and NRA regions [that is, regions with both units] in every case outpaced the United States and Penobscot and Piscataquis counties in standard measures of economic growth . . . [r]egions with NRAs only show mixed performance compared to the United States and Penobscot and Piscataquis counties in standard measures of economic growth.”²⁵² Perhaps more importantly for the present analysis, it also notes that while “[p]eer National Park and NRA regions generally have seen their economies diversify into predominately services-oriented economies, . . . NRA regions without associated National Parks generally have been less successful at making a transition to a modern services economy.”²⁵³ While there are certainly many factors playing a role in these findings, they are consistent with the intuition that the different unit classifications can act as differentiated economic signals and tell businesses something general about what type of commercial activity might succeed nearby. Specifically, the study suggests that the NRA classification signals that the underlying unit will not support particularly robust levels of economic activity. In other words, the classification signals that the NRA unit itself is unlikely to provide an adequate support structure for the success of many types of business. The national parks classification, on the other hand, appears to signal the opposite—that the underlying unit can support relatively robust levels of economic activity. In sum, this research supports the notion that the unit classifications can act as general, differentiated economic signals to commercial enterprises, but it does not provide insight as to the *kind* of information signaled.

Anecdotal evidence, however, tends to buttress the broader intuition that the classifications signal fairly robust amounts of information. Moab, Utah is nestled between two national parks—Canyonlands and Arches—and is relatively close to both two other national parks (Mesa Verde and Capitol Reef) and several national monuments (Hovenweep, Colorado, and Natural Bridges). Canyonlands and Arches were made national park units in 1964 and 1971, respectively.²⁵⁴ Through a large part of the twentieth century, Moab was a mining town and one of the primary beneficiaries of the government’s insatiable desire for uranium in the 1950s.²⁵⁵ Unfortunately, uranium mining began to decline in the

HEADWATERS ECON. 2 (Feb. 2013), http://headwaterseconomics.org/wphw/wp-content/uploads/Maine_Peer_Report.pdf.

252. *Id.* at 4.

253. *Id.*

254. See MACKINTOSH & McDONNELL, *supra* note 15, at 26, 81. Arches was originally designated a national monument in 1929 and was later elevated. *Id.* at 26.

255. See *Incorporation & Recent History*, CITY OF MOAB, UTAH, <http://www.moabcity.org/index.aspx?NID=103> (last visited Nov. 3, 2016).

early 1960s, and the industry effectively collapsed in the mid-1980s.²⁵⁶ Rather than see its economy totally collapse, however, the town's outdoor recreation and tourism industry (mountain bike stores, bed and breakfasts, motels, recreational equipment shops, and so on) began to grow quickly in the 1970s.²⁵⁷ Prior to the 1960s and 1970s, the recreational tourism industry was not particularly present in Moab—there was a small presence, but nothing like what was to come.²⁵⁸ Nor has this trend appeared to stop in recent years—according to the NPCA “[b]etween 1998 and 2006, the number of travel-related jobs grew by 27 percent in [Grand and San Juan] counties, while employment in other sectors of the economy grew by only five percent.”²⁵⁹

Travis Schenck, the former director of the Museum of Moab, explained the shift by stating that it was with “the completion of I-70 and the designations of Canyonlands and Arches National Parks in 1964 and 1971, respectively, [that] Moab was finally well primed to become a base for tourism and recreation.”²⁶⁰ It seems that the designation of Arches and Canyonlands as national parks sent a signal that a certain type of business could thrive in Moab. To characterize it broadly, the classification not only meant that more tourists would be coming to Moab, but that they would likely be staying for extended periods and engaging in strenuous physical activity. In other words, it gave interested commercial enterprises fairly nuanced information about what economic climate they could expect should they decide to move to southeastern Utah.

As noted above, the evidence recounted is somewhat anecdotal, and truly granular research on the economic signaling effects of the hierarchy appears to be limited. The examples presented, however, do buttress the core intuition that, in addition to providing nuanced information about available experiences to visitors, the classifications act as a robust economic signal for businesses. That is, they are information-rich

256. See *id.* (“By 1964, however, the demand for uranium had decreased. The largest mine closed and the mill laid off hundreds of workers.”).

257. See *id.*; Stina Sieg, *Moab's Economic History Is Rooted in Adaptation, Change*, MOAB TIMES-INDEPENDENT (June 25, 2009), http://www.moabtimes.com/pages/full_story?article-Moab%E2%80%99s%20economic%20history%20is%20rooted%20in%20adaptation-%20change%20=&hash=comments_2795402&page_label=news_lifetimes&id=2795402&widget=push&instance=lead_story_left_column&open=&#comment_s_2795402.

258. See Sieg, *supra* note 257 (“When business owner Lin Ottinger began giving tours of such spots in the mid-1950s, he became part of the nascent tourist industry—an industry that would soon explode.”).

259. *Landscapes of Opportunity: The Economic Influence of National Parks in Southeast Utah*, NAT'L PARKS CONSERVATION ASS'N, 5 (Apr. 2009), <http://www.riversimulator.org/Resources/NGO/EconomicReportSEUG.pdf>.

260. See Sieg, *supra* note 257.

signals that businesses can utilize to determine not just the overall level of economic activity a unit will support but also the types of business that will thrive close to the unit.

C. *The Classification Hierarchy and Legislative Tailoring*

A third benefit that accompanies the classification hierarchy is that it creates opportunities for new System units to be tailored to the needs of the groups involved in their creation. The hierarchy does this by presenting a detailed menu of options that carry different implied levels of prestige, protection, and government involvement.²⁶¹ Thus, rather than having a situation where a unit is a national park (with all of that designation's attendant historical and cultural baggage) or nothing, the hierarchy allows a broad range of intermediate, flexible designation options such as national seashore or national historic site. This adaptability allows for prospective units to respond to the needs of different groups in a variety of ways. The resultant benefit is that more units are brought into the System than might otherwise be the case. This Subsection will explore how the opportunity for tailoring presented by the hierarchy can positively impact three groups: interest groups, local communities, and the National Park Service itself.

1. The classification hierarchy and interest groups.

In his book on the National Park System, Dwight Rettie describes the numerous designations for military parks as the result of a battle between groups who could not come to agreement over the specifics of unit creation.²⁶² Indeed, he claims that this is the "near-normal situation regarding Civil War battlefields."²⁶³ Rettie's analysis is limited to the context of military sites, and thus understates the role of interest groups in the creation of national park units as a whole. This Subsection will explore the idea that interest groups play a far larger role in the creation of park units, and that the classification hierarchy facilitates the interaction between interest groups such that more units are created.

Since the beginning, interest groups have played a role in shaping the park units. Alfred Runte closely documented the impact that railroad corporations had on the creation of the first national parks. For example,

261. This bears a familial relation to the *numerus clausus* idea in property law. See generally Thomas W. Merrill & Henry E. Smith, *Optimal Standardization in the Law of Property: The Numerus Clausus Principle*, 110 Yale L.J. 1 (2000). Indeed, the connections between the National Park System and American property law would be a fruitful direction for further research.

262. See RETTIE, *supra* note 5, at 46–47.

263. *Id.* at 46.

Jay Cooke's Northern Pacific Railroad financed lectures on Yellowstone to Washington, D.C. notables and encouraged Ferdinand Hayden, then-Director of the U.S. Geological Survey, to finance Thomas Moran's painting, *The Grand Canyon of the Yellowstone*.²⁶⁴ A little later, Cooke's chief assistant specifically asked Hayden to recommend that Congress set aside Yellowstone as a park.²⁶⁵ The railroad lobby similarly agitated for the creation of Yosemite National Park, Mount Rainier National Park, and NPS itself.²⁶⁶ Nor has interest group involvement ended in the intervening years. Indeed, interest groups appear to be a perennial fixture at hearings on the creation of new units—local and national, for and against, small and large.²⁶⁷ Further, these groups are not just called to Washington to blivate on congressional machinations; they are often the ones reaching out to Congress members with plans for new units or organizing campaigns to support new units or, alternatively, organizing campaigns to defeat new units.²⁶⁸ All in all, interest groups play an important role in the creation of almost every unit, regardless of designation.

The classification hierarchy plays an important role in the interest group dance by providing structured opportunities for compromise, bargaining, and resolution. More specifically, the hierarchy offers a system where different classifications tend to entail different levels of legal protection, prestige, tourism, government involvement, and more. As such, it generates room for the resolution of interest group conflicts in a variety of ways rather than letting such conflicts devolve into hardened stalemates.

One example of the hierarchy facilitating cooperative resolution of interest group conflict is found in the designation of the New River Gorge (located in West Virginia) as a National River. Originally, the Chamber of Commerce of Fayette Plateau, West Virginia had approached their Senator—Jennings Randolph—with a request that he look into preserving the river.²⁶⁹ In response, Senator Randolph introduced a bill to designate the river as a national park.²⁷⁰ The bill did

264. NATIONAL PARKS, *supra* note 115, at 33–34.

265. *Id.* at 37–38.

266. *Id.* at 52–55, 58–60, 75–97.

267. See, e.g., *Thaddeus Kosciuszko Home National Historic Site: Hearings on H.R. 256 Before the Subcomm. on Nat'l Parks and Recreation of the H. Comm. on Interior and Insular Affairs*, 92d Cong. 55–59 (1972) (testimony of Aloysius A. Mazewski, President of the Polish National Alliance and President of the Polish-American Congress).

268. See, e.g., *Point Reyes Hearing*, *supra* note 195, at 83–97, 123–25, 165 (featuring testimony and statements from representatives of the West Marin Property Owners Association, the American Farm Bureau Federation, and the National Wildlife Federation, all of whom took different positions on the unit proposal).

269. *New River Gorge Hearing*, *supra* note 79, at 25.

270. *Id.*

not go anywhere.²⁷¹ He then sought to have the West Virginia portion included in the Wild and Scenic River System (although he also felt that this was "not enough"),²⁷² but this too failed.²⁷³ By 1978, however, Senator Randolph related that "national river designation, a part of the National Park System, was seen as the most viable solution. This designation not only prevents encroachment upon the river and the gorge but also provides an acceptable means of utilizing the river's valuable recreational resources."²⁷⁴ Additionally, it allowed for coal mining in the adjacent area.²⁷⁵ Corroborating Senator Randolph's account, Congressman Nick Rahall described the national river designation bill as sharing the "support of businessmen, conservationists, and the Administration" and as being a "consensus bill" that would suit the needs of all those affected by designating a specific portion of the New River as a 'national river.'"²⁷⁶

Nor is New River Gorge an isolated example. The history of Congaree Swamp National Monument (now Congaree National Park in South Carolina) illustrates the classification system being utilized to cut off potential future conflict. During the subcommittee markup of the bill establishing Congaree Swamp, the classification for the unit was changed from national preserve to national monument.²⁷⁷ There were two primary reasons for the change: hunting was not to be allowed inside the unit (a ban prompted by opposition from several important parties), and, unlike in other preserves, mining was also to be banned.²⁷⁸ Classifying Congaree Swamp as a "national monument" facilitated these goals better than the national preserve classification and helped stave off conflicts that might have arisen between those who believed the preserve classification allowed them to hunt or mine and those who believed Congaree had a higher level of protection.²⁷⁹ Indeed, Representative Keith Sebelius concluded:

271. *Id.*

272. *Id.*

273. Interestingly, the headwaters of the river (located in North Carolina) were protected in 1977. *See id.* at 40.

274. *Id.* at 25–26. *See also id.* at 51 (providing the statement of the Izaak Walton League, which had originally supported national park status but switched to supporting national river status).

275. *Id.* at 26.

276. *Id.* at 23.

277. H.R. 11891 and H.R. 12111, *To Authorize the Establishment of the Congaree Swamp National Preserve in the State of South Carolina, and for Other Purposes, Markup Session Before the Subcomm. on Nat'l Parks and Recreation of the H. Comm. on Interior and Insular Affairs*, 94th Cong. 10 (1976) [hereinafter *Congaree Hearing*].

278. *Id.* at 7–9.

279. *Cf. infra* notes 285–287 and accompanying text.

I think that the term ‘monument’ would be more fitting than ‘preserve,’ because it falls in the category, the way the National Park Service has it, ‘public monument’ falls in the category just below ‘national park.’ If we are going in there to spend this kind of money, we ought to do it right. I would favor calling it a ‘monument’ rather than a ‘preserve.’²⁸⁰

Importantly, the clearest example of the hierarchy generating room for antagonistic resolution is found in this national monument designation. The fact that the president can bestow the classification unilaterally²⁸¹ allows interest groups to break through blocks of opposition to other classifications, like national park status. Indeed, presidents have often utilized the national monument power at the urging of environmental and preservation groups to get around opposition in Congress. One example of this is the Sierra Club’s involvement with President Obama’s designation of the three national monuments in southern California in 2016—Sand to Snow, Mojave Trails, and Castle Mountain.²⁸² A recent example can be found in the quest to have the area near Canyonlands National Park and Natural Bridges National Monument designated as Bear’s Ears National Monument by environmental groups, business interests, and Native American groups.²⁸³ The political interests governing Congress made a national park initiative for Bear’s Ears unlikely to succeed; as a result, groups interested in preserving the site opted to pursue a national monument initiative with President Obama directly.²⁸⁴

280. *Congaree Hearing*, *supra* note 277, at 9–10.

281. It is worth noting that no court has found the Antiquities Act to be unconstitutional, despite challenges arising over the years. The Supreme Court has never actually discussed this question at length, but simply upheld the validity of the Act. *See, e.g.,* *Cameron v. United States*, 252 U.S. 450, 455 (1920). While some lower courts have engaged in more extensive analysis, they too have upheld the Act. *See, e.g.,* *Mountain States Legal Found. v. Bush*, 306 F.3d 1132, 1135–38 (D.C. Cir. 2002).

282. *See* Jason Mark, *The Story Behind the California Desert’s New National Monuments*, SIERRA CLUB (Feb. 12, 2016), <http://www.sierraclub.org/sierra/2016-1-january-february/green-life/story-behind-california-deserts-new-national-monuments>. Castle Mountains is managed by NPS, Mojave Trails is managed by the Bureau of Land Management, and Sand to Snow is managed by the U.S. Forest Service.

283. *See Tribal Statements of Support*, BEARS EARS INTER-TRIBAL COALITION, <http://www.bearscoalition.org/about-the-coalition/tribal-statements-of-support/> (last visited Nov. 4, 2016); *Stand Behind Tribes to Protect Bears Ears*, S. UTAH WILDERNESS ALL., <http://suwa.org/issues/bears/> (last visited Nov. 4, 2016); *Outdoor Industry Leaders Denounce Utah Legislature’s Short Sightedness on Bears Ears*, OUTDOOR INDUS. ASS’N (May 18, 2016), <https://outdoorindustry.org/press-release/outdoor-industry-leaders-denounce-utah-legislatures-short-sightedness-on-bears-ears/>.

284. This initiative paid off when President Obama designated Bears Ears as a national monument on December 28, 2016. The monument will be jointly managed by the Forest Service and BLM. *See* Proclamation No. 9558, 82 Fed. Reg. 1,139 (Jan. 5, 2017).

The hierarchy can also facilitate dealing between interest groups within Congress, as the hearing on the designation of part of Craters of the Moon National Monument (in Idaho) as a national preserve illustrates. Following President Clinton's expansion of the National Monument under the Antiquities Act, Western congressmen were upset that hunting was no longer allowed on the land (it had formally been authorized and there was, apparently, an informal agreement that it would continue to be authorized).²⁸⁵ Idaho's congressional delegation introduced a bill to authorize hunting in the area, but changed the name of the unit to National Preserve.²⁸⁶ Representative Mike Simpson explained the change: “[It] was done at the request of the minority on the House side. Their members would rather not set the precedent of hunting in a national monument, so they wanted to change the name to a national preserve, which I agreed to.”²⁸⁷

Ultimately, the availability of the hierarchy facilitates the resolution of a variety of interest groups' battles that might otherwise block the creation of new NPS units by providing both opportunities for cooperation and methods of shortcutting opposition. The upshot of this is that interest group deadlock is lessened and there are more—perhaps many more—opportunities to expand the National Park System.

2. The classification hierarchy and local communities.

Local communities are a second group that the hierarchy aids by creating room for legislative tailoring. The existence of a robust hierarchy means that units can be tailored to the needs of the community. Of course, this does not mean that an amusement park would be placed inside a national park if a community demanded it. Rather, it means that the contours of a proposed unit can be shaped by what is most appropriate for a local community. Not every town needs or wants a national park outside—such a designation might bring in too many tourists, impose onerous restrictions on land near the park, or might simply entail too much federal government presence in areas disinclined to such presence. The community may still, however, wish to protect, commemorate, or otherwise preserve some land nearby. Fortunately, the classification hierarchy provides localities with a menu of different

285. See *Governors Island; Vicksburg Military Park; Niagara Falls Heritage Area; And Craters of the Moon National Preserve Bills*, Hearing on S. 689, S. 1175, S. 1227, and H.R. 601 Before the Subcomm. on Nat'l Parks of the H. Comm. on Energy and Nat. Res., 107th Cong. 15–16 (2001) (statement of the Hon. Mike Simpson, U.S. Rep. from Idaho).

286. See *id.*

287. See *id.* at 15.

options to choose from when they are deciding to support or oppose particular designations.

The ambivalence many residents of Grand Junction, Colorado showed toward the proposed elevation of Colorado National Monument to a national park illustrates this idea nicely.²⁸⁸ Some residents worried about more traffic, while others expressed concern about more “Big Government.”²⁸⁹ Citizens seemed content with having the national monument classification, with its attendant lower profile, and are wary of national park status for the same reasons others are for it.²⁹⁰ It appears that the national monument classification is well suited to the area, whereas the national park classification might not be. The account of New River Gorge in the prior subsection is also suggestive. In that case, given the desire to preserve certain recreational and commercial activities—such as fishing, river rafting, and coal mining—some local groups might have been unhappy with national park status and the stringent protections that classification brings with it.²⁹¹ As such, national river status may have been a more appropriate option.

The extensive hearings on Canyonlands National Park in Utah illustrate both the possibilities of tailoring and how the classification system can also prevent units from being too tailored. During the hearings, the mayors of Blanding, Moab, and Monticello were all very supportive of having a national park in the area, and none advocated for a different designation.²⁹² They felt, apparently, that the community needed the tourism that would come through national park status.²⁹³ At the same time, they were also keenly interested in allowing “multiple use” (a term that generally denotes land being managed to allow a variety of activities, including extractive endeavors such as uranium mining) to be allowed within the park boundaries,²⁹⁴ even though this practice is

288. Jack Healy, *Disputing Whether a Treasure Needs a Name Upgrade*, N.Y. TIMES, June 17, 2012, http://www.nytimes.com/2012/06/17/us/debating-if-colorado-national-monument-should-be-a-national-park.html?_r=0.

289. *Id.*

290. *Id.*

291. See *New River Gorge Hearing*, *supra* note 79, at 25–26 (commenting that national river designation balanced river preservation with commercial interests and noting concern over allowing coal mining nearby).

292. *Proposed Canyonlands Nat'l Park in Utah: Hearings on S. 2387 Before the Subcomm. on Public Land of the S. Comm. on Interior and Insular Affairs*, 87th Cong. 206–09, 288–90, 307–09 (1962) [hereinafter *Canyonlands Field Hearings*] (statements of Kenneth R. Bailey, Jr. Mayor of Monticello, Utah; Riley Hurst, Mayor of Blanding, Utah; and the Hon. Norman G. Boyd, Mayor of Moab, Utah).

293. See *id.* at 209, 289.

294. See, e.g., *id.* at 289–90 (featuring Mayor Riley Hurst strongly advocating multiple use within the park).

generally out of keeping with the national park classification.²⁹⁵ In essence, they wanted to have their cake and eat it too.

In response to the tension, the witness for the San Juan County Canyonlands Committee proposed a compromise solution: surround the proposed national park with a national recreation area in which multiple use would be permitted.²⁹⁶ This would keep the "conservationists and the State content."²⁹⁷ While this proposal did not come to pass, it does illustrate the potential the hierarchy offers for accommodating a range of local interests. On the flip side of the coin, despite the mayors' claims that multiple use was necessary to the region's economic health, many of the congressmen continued to feel skeptical about such a proposition—precisely because it was not in line with the classification. At a later hearing, for example, Representative Thomas Morris, then-chairman of the House Subcommittee on National Parks, made very clear that national park status did not admit multiple-use in his mind; the classification came with restrictions, and the localities had to take it or leave it.²⁹⁸ Thus, while the hierarchy makes it easier for localities to find a way to accommodate their peculiar circumstances, it also sets limits on how far they can go.

Of course, it is worth reiterating that, theoretically, Congress could tailor a unit to the exact specifications of a local community.²⁹⁹ With that said, it is unlikely that Congress is going to create a national park and then allow wanton mining or endless grazing inside of it. Fortunately, the existence of the classification hierarchy means that, should towns wish to have a System unit nearby, they have a range of different classifications to choose from and can pursue the one that fits their needs (to an extent).

3. The National Park Service and the classification hierarchy.

Interest groups and localities are the big players in the legislative tailoring story. It is, however, worth noting that by facilitating legislative tailoring the hierarchy also helps the National Park Service itself. Specifically, the hierarchy facilitates System growth and it provides opportunities for relieving the recreation-preservation tension that is a core feature of the NPS.

295. See *id.* at 243–44.

296. *Id.* at 245.

297. *Id.* at 246.

298. See *Executive Session on H.R. 6925*, *supra* note 194 and accompanying text.

299. See *supra* notes 97–99 and accompanying text.

a. System Growth

As stated above, the hierarchy helps both interest groups and localities by creating room for units to be tailored to the needs of those parties. In addition to making these parties happy, the hierarchy creates more opportunities for the park system to be expanded than would otherwise be the case. For example, more entities might be willing to pursue a National Park System unit because they can be more confident that they can roughly shape it to their needs. The further implication from this is that we get a System that is populated by a greater number of units with “lesser” classifications (national historical site, national seashore, and national preserve, for example) than with “greater” classifications (national park, national monument, and national historical park, for example).³⁰⁰ While this process may engender a few so-called “rotten units” whose existence is debatable,³⁰¹ overall, it is good for the entire System for several reasons.

Most obviously, it means that the System will continue to grow. Even though there has not been a truly “whole cloth” national park since Voyageurs in 1971³⁰² (technically, the last national park was created when Pinnacles National Monument was reclassified on January 10, 2013³⁰³), there have been well over 100 additions to the System since Voyageurs, through both executive and legislative action.³⁰⁴ Indeed, since the beginning of 2015, President Obama signed executive orders authorizing the creation of six new national monuments under NPS jurisdiction.³⁰⁵ While some might bemoan the lack of new national parks, the System *is* growing. And this growth has not just been by the executive’s hand either; since 2009, there have been ten new park units authorized by Congress, and two awaiting land acquisition.³⁰⁶ Interestingly, several of these—Paterson Great Falls National Historical Park (New Jersey), Tule Springs Fossil Beds National Monument (north of Las Vegas, Nevada), World War I Memorial (Washington, DC), Valles Caldera National Preserve (New Mexico), Blackstone River Valley National Historical Park (shared by Rhode Island and

300. See RETTIE, *supra* note 5, at 73–85 (discussing the “crown jewels” of the System and ways of ranking the units).

301. See *id.* at 20 (describing criticisms of Steamtown National Historic Site).

302. See *Facts & Figures*, *supra* note 2 (noting dates of designations under “NPS Anniversaries”).

303. See *Facts & Figures*, *supra* note 2 (noting changes to NPS sites under “Recent Changes in the National Park System”).

304. See *Facts & Figures*, *supra* note 2 (noting dates of designations under “NPS Anniversaries”).

305. See *Monuments Protected under the Antiquities Act*, *supra* note 1.

306. See *Facts & Figures*, *supra* note 2 (noting changes to NPS sites under “Recent Changes in the National Park System”).

Massachusetts), and Manhattan Project National Historical Park (multiple locations in New Mexico, Tennessee, and Washington state)—were created after the House of Representatives switched over to a leadership supposedly less inclined to support the federal government’s expansion.³⁰⁷ In essence, by making it easier to bring new units into the System, the hierarchy has directly contributed to the System’s continued relevance and growth.

Additionally, the classification hierarchy prevents a devaluation of the entire system by helping to ensure that some parks will be more important than others. This proposition is not getting at management strategy—as mentioned above, under the General Authorities Act all park units need to be managed on an equal footing³⁰⁸—but, rather, the psychology of the designations. Even though all the units must be treated as an equal part of the system, it is no great revelation to say that the public believes that Zion National Park and Tallgrass Prairie National Preserve are different in terms of prestige and prominence.³⁰⁹ If everything were called a national park—from the Grand Canyon to the Springfield Armory—that term would quickly lose some of its special meaning. Perhaps the Grand Canyon wouldn’t lose visitors, but calling it a national park would unarguably mean less. More distressingly, calling new units national parks would not mean much of *anything*. By creating more opportunities for expansion and, specifically, expansion within the lesser classifications, the classification hierarchy helps ensure that the “crown jewels” of the System remain polished and reflect well on the System as a whole.

b. Managing the Recreation-Preservation Tension

Finally, the classification hierarchy also helps NPS navigate the tension that commentators have noted lies at the core of the agency’s history and statutory mandate: between tourism-focused management and ecology-focused management.³¹⁰

This tension originates as early as the creation of Yellowstone and is enshrined in the Organic Act, which states that NPS was founded to “conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of

307. See *id.*

308. See *supra* notes 62–66 and accompanying text.

309. See RETTIE, *supra* note 5, at 73–85 (discussing the “crown jewels” of the System and the issues that such a psychology entails).

310. See, e.g., RANDALL K. WILSON, *AMERICA’S PUBLIC LANDS: FROM YELLOWSTONE TO SMOKEY BEAR AND BEYOND* 64–104 (2014).

future generations.”³¹¹ Conserving “natural and historic objects and the wild life,” and providing “for enjoyment of the same” is not an easy to balance to strike,³¹² and, often, NPS would err on the side of recreation.³¹³ For example, Stephen Mather continued to cultivate close relationships with the railroad companies that helped drive the creation of NPS in the first place and, critically, began to push development in the System that would make it more automobile friendly.³¹⁴ Indeed, according to one NPS historian, “[b]y the time his health problems forced him to resign early in 1929, the parks had undergone extensive development involving virtually every type of facility needed to support recreational tourism and park administration.”³¹⁵ Nor did this impulse to develop for tourists end with Mather; between 1956 and 1966, NPS pursued “Mission 66,” which was aimed at renovating and rehabilitating the System to make it more capable of handling the post-war increase in visitors.³¹⁶ Such development does not coexist easily with a comprehensive preservation policy (whether of natural objects, historic objects, or wildlife).

Since the 1960s, however, NPS has slowly moved toward a more balanced approach in mediating between perseveration of “natural and historic objects and the wild life” and providing “for the enjoyment of the same.”³¹⁷ To be sure, there is no single cause for this course correction. The development of ecological science, the environmental awakening of the 1960s and 1970s among members of the public, the addition of units that were not simply based in scenery, the expansion of environmental laws, more active monitoring by environmental groups, and the advent of ecosystem management in the 1990s have all played a role in pushing NPS to pursue the preservation side of the preservation-recreation equation more robustly. Regardless of the underlying

311. Organic Act, ch. 408 § 1, 39 Stat. 535, 535 (1916). See SELLARS, *supra* note 63, at 5, 7–27, 38–46, 89–90; WILSON, *supra* note 310, at 64; NATIONAL PARKS, *supra* note 115, at 139.

312. See generally SELLARS, *supra* note 63. See also WILSON, *supra* note 310, at 64–104.

313. See SELLARS, *supra* note 63, at 2–5 (providing an overview of the book and discussing the general pattern of NPS favoring development for tourism even against rising criticism and the development of more ecologically informed methods of management.); WILSON, *supra* note 310, at 86–102.

314. See SELLARS, *supra* note 63, at 59–61, 89; NATIONAL PARKS, *supra* note 115, at 41–73; WILSON, *supra* note 310, at 82–84.

315. SELLARS, *supra* note 63, at 59.

316. See WILSON, *supra* note 310, at 90–91; NATIONAL PARKS, *supra* note 115, at 156–58; SELLARS, *supra* note 63, at 180–91.

317. An Act to Establish a National Park Service, and for Other Purposes, ch. 408, § 1, 39 Stat. 535, 535 (1916).

historical causes, NPS continues to struggle with this balance and it is arguably one of the core features of the agency.³¹⁸

The hierarchy, however, can create opportunities for relieving this tension within the letter and spirit of the NPS's governing statutes. By facilitating the entry of a wide variety of units in the System, the classifications provide the opportunity for NPS to pursue a range of different management strategies, while still managing the System as a single overarching entity as required by the General Authorities Act. Similarly, the hierarchy can also create opportunities for fine-tuning various management policies by allowing "trial runs" in spaces where the stakes are marginally lower.

For instance, the existence of a National Recreation Area classification and a National Preserve classification provides a space for NPS to engage in recreation-intensive management, such as by allowing for activities such as boating (in NRAs) and hunting (in Preserves), and creates room for more preservation-focused management practices at other units, such as national parks and national monuments. Alaska provides an on-the-ground example of this: several of the large Alaska units feature National Parks and National Preserves abutting each other. This was done in large part to create space for both preservation and recreation uses and management within the same geographic range:

A National Preserve in Alaska shall be administered and managed as a unit of the National Park System in the same manner as a national park except as otherwise provided in this Act and except that the taking of fish and wildlife for sport purposes and subsistence uses, and trapping shall be allowed in a national preserve under applicable State and Federal law and regulation.³¹⁹

Similarly, Canyonlands National Park and Glen Canyon National Recreation Area abut each other and cover similar landscape (the high desert of the Colorado Plateau and the Colorado River), but provide opportunities to manage that space differently. The Act establishing Canyonlands states that the park was created to "preserve an area in the State of Utah possessing superlative scenic, scientific, and archeologic features for the inspiration, benefit, and use of the public."³²⁰ The act further phases out grazing and does not otherwise provide for extractive

318. See generally NATIONAL PARKS, *supra* note 115, at 163–235; SELLARS, *supra* note 63, at 203, 214–308.

319. Alaska National Interest Lands Conservation Act, Pub. L. No. 96–487, § 1313 (1980) (codified as amended at 16 U.S.C. § 3201 (1980)) ("ANILCA"). ANILCA created vast amounts of new parkland in Alaska, including Wrangell-St. Elias National Park and Preserve, Gates of the Arctic National Park and Preserve, Lake Clark National Park and Preserve, and Glacier Bay National Park and Preserve. *Id.*

320. 16 U.S.C. § 271 (2012).

activity or other special uses within the park.³²¹ The act establishing Glen Canyon National Recreation Area, on the other hand, states that it was established to “to provide for public outdoor recreation use and enjoyment of Lake Powell and lands adjacent thereto in the States of Arizona and Utah and to preserve scenic, scientific, and historic features contributing to public enjoyment of the area.”³²² The act also specifically allows for “hunting, fishing, and trapping on lands and waters” and also authorizes grazing and mining.³²³

In this way, the different classifications—with their different normative valences, histories, and underlying mandates—allow NPS to ease the recreation-preservation tension by spreading it laterally across the entire System. In other words, the hierarchy creates more room for NPS to manage the System in ways geared toward both recreation and preservation by providing set spaces for both within different classifications.

CONCLUSION

The National Park System utilizes a complex classification hierarchy to distinguish between the 400-plus units that comprise NPS’s direct holdings. Some have called for the abolition of this hierarchy and the unification of all parks under the national park heading or, less radically, a simplification of the hierarchy such that it contains only a handful of designations. While there are cogent arguments supporting this position, there have been few discussions of the benefits generated by the classification hierarchy. This Article has attempted to push back against the call for simplification by engaging in such a discussion and suggesting that there are multiple reasons to keep a nuanced classification hierarchy in place. It has done this by exploring two key questions: Why do we have the hierarchy? And what good does the hierarchy do us?

Before exploring these questions, however, it is important to remember that beyond any current benefits, the classification hierarchy is deeply embedded in the history of the National Park System. Indeed, the hierarchy existed before the NPS existed and as NPS grew so too did the hierarchy. This alone should give us some degree of pause, although it is not dispositive.

In addition to the history standing behind the hierarchy, it also has substantial normative and practical value. First, as the exploration of the first question in Part II shows, the hierarchy is not just the result of

321. See *id.* § 271b; see generally *id.* §§ 271–271g.

322. *Id.* § 460dd.

323. *Id.* §§ 460dd–4, 5.

administrative inertia. Rather, it is deeply connected with America's shifting attitudes toward the natural and built environment. As these attitudes changed, the hierarchy expanded and the different classifications came to reflect particular normative attitudes toward different parts of the land. As such, far from simply providing mere description, the hierarchy acts as a repository for the different pieces of American culture's complicated—and sometimes contradictory—relationship with its heritage.

The hierarchy also has substantial practical value, as the exploration of the second question in Part III demonstrated. The classification hierarchy reinforces environmental law directly through implicit and explicit incorporation into prominent environmental laws and reinforces it indirectly by creating focal points for environmental activism that might not otherwise exist. The classifications also act as economic signals to businesses in a manner similar to the way they act as informational signals to tourists, efficiently providing useful information about what types of commercial activity might thrive in the area surrounding a particular unit. Additionally, the hierarchy creates opportunities for new units to be tailored to the needs and desires of those involved in the process of unit creation. This benefit is particularly useful in the interest group and locality contexts. The end result is that opportunities for new units are generated where they might not have otherwise existed. A secondary effect of this tailoring is that it helps maintain the viability of the System, in terms of both growth and prestige, and can help NPS manage tension in its mission.

Looking forward, this paper suggests several directions that future analysis of NPS classifications could take. Perhaps most intriguingly, an essential question that arises from this paper's exploration regards the broader role of the government in creating classification hierarchies. Underlying the NPS hierarchy and, indeed, any governmentally imposed hierarchy, is a fundamental trust in the government to create such hierarchies and to get such rankings right. Without that trust, it would be difficult to realize the benefits outlined above, as people would not buy into the System. The question, then, is not whether we trust the government to do this—the continued existence and support for NPS seems to indicate that we do—but, rather, why we trust the government to rank things over the private sector in these circumstances, whereas we don't trust them (or, at least, don't ask them) to rank things in other circumstances (such as restaurants or nail salons). We could envision a private hierarchy where the government called every unit the same name and we exclusively trusted private entities (like Google or Yelp) to order the units. Similarly, we could envision a type of "middle ground" hierarchy where the government has visitors rank units and we order

them based on those findings. As it is, we have a hierarchy that is basically constructed by the government and, indeed, comes close to the government engaging in the "picking of winners and losers" that so many decry. Why we trust the government to rank in this situation is not a question that admits of a simple answer. Arguments for private entities might include the idea that such entities will be more sensitive to what visitors actually care about when they are travelling or the idea that those entities might be more willing to change (and even reduce) their ordering over time. Arguments for the government might include the idea that the government has special expertise about the units and can thus make a more holistic assessment of the units than private entities or the idea that NPS units are special because they are publicly managed and private ranking might degrade that sense of ownership.³²⁴ While it is beyond the scope of this paper to provide a full analysis of these arguments, the short discussion of them has hopefully demonstrated that there are fruitful directions for further study.

The United States has an extraordinarily complicated National Park System that is both larger and more complex than its analogues abroad.³²⁵ Yet, some commentators seem to see the complicated classification hierarchy we have as a sign of weakness—a flabbiness that needs to be cut out of the system in order for it to maintain its health. This paper suggests that rather than see the classification hierarchy as a malady to be cured, we should look at it as a positive indication of a robust approach to preservation, and recognize that it has many attendant benefits. This is not to say that the hierarchy should be allowed to grow unchecked—a system with 100 classifications would likely be unwieldy and foolish. Instead, it is to argue that the hierarchy, like other venerable parts of the National Park System, should be managed with care and respect.

324. Interestingly, this view would be in keeping with some of the original motivations for creating the parks. See NATIONAL PARKS, *supra* note 115, at 1.

325. See *supra* note 5 (discussing foreign national park systems).